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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF BELLA VISTA WATER CO., INC. AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. W-02465A-09-0411
IN THE MATTER OF THE APPLICATION OF NORTHERN SUNRISE WATER COMPANY, INC., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. W-20453A-09-0412
IN THE MATTER OF THE APPLICATION OF SOUTHERN SUNRISE WATER COMPANY, INC., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. W-20454A-09-0413

IN THE MATTER OF THE JOINT APPLICATION OF BELLA VISTA WATER CO., INC., NORTHERN SUNRISE WATER COMPANY, INC., AND SOUTHERN SUNRISE WATER COMPANY, INC. FOR APPROVAL OF AUTHORITY TO CONSOLIDATE OPERATIONS, AND FOR THE TRANSFER OF UTILITY ASSETS TO BELLA VISTA WATER CO., INC. PURSUANT TO ARIZONA REVISED STATUTES 40-285.

DOCKET NO. W-02465A-09-0414
DOCKET NO. W-20453A-09-0414
DOCKET NO. W-20454A-09-0414

BELLA VISTA WATER COMPANY
NORTHERN SUNRISE WATER COMPANY
SOUTHERN SUNRISE WATER COMPANY

INITIAL CLOSING BRIEF

October 5, 2010

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TABLE OF ABBREVIATIONS AND CONVENTIONS

Applicants use the following abbreviations in citing to the pre-filed testimony and hearing transcripts in this brief. Other documents that were admitted as exhibits during the hearing are cited by hearing exhibit number. The parties' final schedules setting forth their respective final positions will be cited in abbreviated format as follows: Applicants, BVWC, NSWC, or SSWC Final Schedule XXX, Staff Final Schedule XXX; RUCO Final Schedule XXX.* Other citations to testimony and documents are provided in full, including (where applicable) the Corporation Commission's docket number and filing date.

APPLICANTS' PRE-FILED TESTIMONY

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Direct Testimony of Greg Sorensen (09-0411) Bella Vista Water Company	**A-1**	Sorensen BVWC Dt.
Direct Testimony of Greg Sorensen (09-0412) Northern Sunrise Water Company	**A-2**	Sorensen NSWC Dt.
Direct Testimony of Greg Sorensen (09-0413) Southern Sunrise Water Company	**A-3**	Sorensen SSWC Dt.
Direct Testimony of Greg Sorensen (09-0414) Joint Application for Consolidation	**A-4**	Sorensen Joint Dt.
Rebuttal Testimony of Greg Sorensen	**A-5**	Sorensen Rb.
Rejoinder Testimony of Greg Sorensen	**A-6**	Sorensen Rj.
Direct Testimony of Thomas J. Bourassa (09-0411) Bella Vista Water Company	**A-7**	Bourassa BVWC Dt.
Direct Testimony of Thomas J. Bourassa (COC) (09-0411) Bella Vista Water Company	**A-8**	Bourassa BVWC COC Dt.

* Applicants filed their Final Schedules on September 16, 2010.

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Direct Testimony of Thomas J. Bourassa (09-0412) Northern Sunrise Water Company	**A-9**	Bourassa NSWC Dt.
Direct Testimony of Thomas J. Bourassa (COC) (09-0412) Northern Sunrise Water Company	**A-10**	Bourassa NSWC COC Dt.
Direct Testimony of Thomas J. Bourassa (09-0413) Southern Sunrise Water Company	**A-11**	Bourassa SSWC Dt.
Direct Testimony of Thomas J. Bourassa (COC) (09-0413) Southern Sunrise Water Company	**A-12**	Bourassa SSWC COC Dt.
Direct Testimony of Thomas J. Bourassa (09-0414) Joint Application for Consolidation	**A-13**	Bourassa Joint Dt.
Rebuttal Testimony of Thomas J. Bourassa	**A-14**	Bourassa Rb.
Rebuttal Testimony of Thomas J. Bourassa (COC)	**A-15**	Bourassa COC Rb.
Rejoinder Testimony of Thomas J. Bourassa	**A-16**	Bourassa Rb.
Rejoinder Testimony of Thomas J. Bourassa (COC)	**A-17**	Bourassa COC Rj.
Rebuttal Testimony of Peter Eichler	**A-18**	Eichler Rb.
Rejoinder Testimony of Peter Eichler	**A-19**	Eichler Rj.

STAFF
PRE-FILED TESTIMONY

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Direct Testimony of Pedro M. Chaves	**S-1**	Chaves Dt.
Surrebuttal Testimony of Pedro M. Chaves	**S-2**	Chaves Dt.
Direct Testimony of Marlin Scott Jr.	**S-3**	Scott Dt.
Surrebuttal Testimony of Marlin Scott Jr.	**S-4**	Scott Sb.
Direct Testimony of Crystal S. Brown	**S-6**	Brown Dt.
Surrebuttal Testimony of Crystal S. Brown	**S-7**	Brown Sb.
Supplemental Direct Testimony of Crystal S. Brown	**S-8**	Brown Supp. Dt.

RESIDENTIAL UTILITY CONSUMER OFFICE
PRE-FILED TESTIMONY

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Direct Testimony of William A. Rigsby	**R-6**	Rigsby Dt.
Supplemental Direct Testimony of William A. Rigsby	**R-7**	Rigsby Supp. Dt.
Surrebuttal Testimony of William A. Rigsby	**R-8**	Rigsby Sb.
Direct Testimony of Rodney L. Moore	**R-9**	Moore Dt.
Supplemental Direct Testimony of Rodney L. Moore	**R-10**	Moore Supp. Dt.
Surrebuttal Testimony of Rodney L. Moore	**R-11**	Moore Sb.
Direct Testimony of Timothy J. Coley	**R-12**	Coley Dt.

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Surrebuttal Testimony of Timothy J. Coley	**R-13**	Coley Sb.
Direct Testimony of Jodi A. Jerich	**R-25**	Jerich Dt.
Supplemental Direct Testimony of Jodi A. Jerich	**R-26**	Jerich Supp. Dt.
Surrebuttal Testimony of Jodi A. Jerich	**R-27**	Jerich Sb.

OTHER PORTIONS OF THE RECORD

	Hearing Exhibit
AZAm - Liberty shared services model comparison	**A-21**
American Water Annual Report	**A-26**
1996 NARUC Misc. Expense for Class A Water Utilities	**A-28**
Global form S-1	**A-29**
Excerpt from Becker AZ AM SB Testimony	**A-30**
Asset Retirement Policy	**A-31**
Travis Materials re: Customer Deposits	**S-25**
NARUC Guidelines for Affiliate Transactions	**R-20**

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Applicants Bella Vista Water Co., Inc. ("BVWC"), Northern Sunrise Water Company, Inc. ("NSWC"), and Southern Sunrise Water Company, Inc. ("SSWC") (jointly "Applicants" or "Company") hereby submit this Initial Closing Brief in support of their applications for consolidation and rate relief.[1]

OVERVIEW AND FACTUAL BACKGROUND

I. THE APPLICANTS.

A. Bella Vista Water Company.

BVWC started out in 1955 as Newman Water Company when the Commission first granted a Certificate of Convenience and Necessity ("CC&N") to provide water utility service in an area around Sierra Vista, Arizona.[2] After several extensions of the certificated service territory, and a few name changes, BVWC took its current name in 1981 when its current CC&N area was approved.[3] BVWC then acquired and consolidated a small nearby water utility, the Nicksville Water Company, under Commission approval in 1999.[4] BVWC's present CC&N includes two major water systems, the City system and the Bella Vista south system.[5] The area is not part of an Active Management Area, although Cochise County has implemented certain rules requiring proof of adequate water supply for new construction/subdivisions, which are helpful in controlling growth and ensuring adequate water supply for the area's citizenry.[6]

Today, BVWC serves roughly 7,500 residential customers, and more than 1,000

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[1] The key for abbreviations and citations to a witness pre-filed testimony is set forth in the Table of Abbreviations and Conventions in pages iii to vi following the Table of Contents. The table also lists the hearing exhibit numbers of the parties' pre-filed testimony. Other hearing exhibits are cited by the hearing exhibit number and, where applicable, by page number, e.g., Ex. R-13 at 2. The transcript of the hearings is cited by page number, e.g., Tr. at 1. In this brief, "Company" will be used to refer to the consolidated Bella Vista, as opposed to "Applicants", which will be used to reference the three entities in their current form.

[2] Decision No. 28866 (April 18, 1955).

[3] Decision No. 52033 (April 10, 1981).

[4] Jerich Supp. Dt. at 5:17-18.

[5] Sorensen BVWC Dt. at 3:11-12.

[6] *Id.* at 2:22-26.

commercial/industrial customers, in full compliance with federal, state and local laws and regulations.[7] Irrigation customers include several HOAs, the City of Sierra Vista and several local schools and colleges. BVWC has more than 30 wells and nearly 30 million gallons of water storage.[8] Nevertheless, water supply remains a significant challenge in the South System.[9] Simply stated, the South System sits on solid rock, which geology negatively impacts the yield from groundwater pumping. BVWC promotes water conservation in its service area and implements Best Management Practices (or BMPs) even though it is not required to do so under current Arizona law.[10]

BVWC was acquired by Algonquin Water Resources of America, Inc., now known as Liberty Water, Inc. ("Liberty Water"), in 2002.[11] Since then, Liberty Water has made substantial capital improvement to the BVWC water systems. For example, there have been two significant water main relocations required by the Arizona Department of Transportation and the City of Sierra Vista, and construction of a new 35,000 gallon storage tank at the Nicksville site.[12] In 2004, BVWC also invested in a new billing system that was necessary to provide quality, accurate and timely billing tied to the general ledger system. In 2008 and early 2009, BVWC invested $300,000 to implement SCADA at several of its well and storage facilities to better improve operations and ensure reliable water supply for its customers.[13] Liberty Water has operated BVWC under its shared services model. This model provides BVWC and its customers the benefits of access to capital, and comprehensive operations and administration resulting in a high quality of service at a reasonable price. Liberty Water's shared services model directly benefits

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[7] *Id.* at 2:19-20, 3:19-21; Scott Dt. at 3:8-10; Brown Dt. at 6:8-9.
[8] Sorensen BVWC Dt. at 3:10-17.
[9] *Id.* at 5:19 – 6:6.
[10] *Id.*
[11] Bourassa BVWC Dt. at 12:14.
[12] Sorensen BVWC Dt. at 4:13 – 5:6.
[13] *Id.*

BVWC and its customers by providing ready and ongoing access to capital and comprehensive management, operations and administration resulting in a high quality of service at a reasonable price.

B. Northern and Southern Sunrise Water Companies.

NSWC's and SSWC's certificated service territories are located in and around Huachuca City and the Whetstone and Hereford townships in Cochise County, Arizona.[14] NSWC and SSWC currently provide water service to 349 and 789 customers, respectively, nearly all of which are residential. NSWC has 4 subsystems, 2 pairs of which are interconnected, and SSWC has 3 subsystems, 2 of which are interconnected.[15] There are a total of ten (10) wells and roughly half a million gallons of combined storage. Like BVWC, this area is not part of an Active Management Area, but is subject to Cochise County's rules concerning water adequacy for new construction/subdivisions.[16] All water supplies are chlorinated for the health and safety of customers and these systems are operated in full compliance with Arizona laws and regulations.[17] This, however, has not always been the case.

NSWC and SSWC were formed by consolidating seven (7) very small water systems into two new water utilities. These water utilities were Miracle Valley Water Company, Cochise Water Co., Horseshoe Ranch Water Company, Crystal Water Company, Mustang Water Company, Coronado Estates Water Company and Sierra Sunset Water Company (collectively the "McLain Systems").[18] Each of these water systems was owned and/or operated by Johnny McLain, and the physical inadequacies and lack of necessary repairs, maintenance and capital improvements for each of the seven

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[14] Sorensen NSWC Dt. at 2:23-24; Sorensen SSWC Dt. at 2:21-22.
[15] Sorensen NSWC Dt. at 2:22, 3:9; Sorensen SSWC Dt. at 2:19, 3:7.
[16] Sorensen NSWC Dt. at 2:24 – 3:3, 9-13; Sorensen SSWC Dt. at 2:22-25, 3:7-10.
[17] Sorensen NSWC Dt. at 3:10-11; Scott Dt. at 3:8-10; Brown Dt. at 6:8-9.
[18] Sorensen NSWC Dt. at 4:2-19; Sorensen SSWC Dt. at 3:20 – 4:13.

McLain Systems were well detailed in Decision No. 66241 (September 16, 2003), at which time the Commission also gave its approval for appointment of the first McLain interim manager, and Decision No. 68826 (June 29, 2006) ("McLain Decision").[19] In Decision No. 68272 (November 8, 2005), the Commission also ordered a moratorium on new hook-ups in the McLain Systems. The McLain Systems went into bankruptcy, in large part due to several hundred thousand dollars of unpaid property taxes, and Liberty Water was the successful bidder for the assets of the seven water systems.[20]

The Commission approved the consolidation of the McLain Systems into NSWC and SSWC in the McLain Decision. More specifically, the Commission approved (1) NSWC and SSWC's Joint Application for approval of the sale and transfer of water utility assets and cancellation of the CC&Ns of the McLain Systems, (2) the applications of NSWC and SSWC for new CC&Ns subject to certain conditions, and (3) rates and charges to be effective for all service provided by NSWC and SSWC.[21] In September 2006, Algonquin Water Services took over as interim operator, replacing the Arizona Small Utility Association. Then, on March 12, 2007, the Commission was notified that Liberty Water's acquisition of the McLain Systems' assets from the bankruptcy estate was complete.[22]

Following the acquisition, Liberty Water turned seven water systems that were unfit for public service into two utilities that currently provide safe, clean and reliable service to more than 1,100 total customers, in full compliance with applicable laws and regulations.[23] This occurred due to the substantial effort and commitment by Liberty Water and its shareholder, Algonquin Power. Major capital improvements funded by the

[19] Sorensen NSWC Dt. at 4:22 – 5:1; Sorensen SSWC Dt. at 4:16-20.

[20] McLain Decision at 5:6-14; Sorensen NSWC Dt. at 4:21; Sorensen SSWC Dt. at 4:15.

[21] McLain Decision at 29:26 – 30:7, 32:14-17.

[22] Sorensen NSWC Dt. at 5:17-20; Sorensen SSWC Dt. at 5:11-14.

[23] Sorensen NSWC Dt. at 6:7-9; Sorensen SSWC Dt. at 6:1-3; Scott Dt. at 3:8-10; Brown Dt. at 6:8-9.

new owners included the installation of new meters, several new storage tanks and a number of pressure facilities, along with replacement of pumps, electrical equipment and treatment facilities, and installation of basic facilities like fencing to secure water plant sites.[24] The total price tag for facilities has exceeded $1.66 million.[25] In sum, the clean-up of the McLain mess did not come without a price.

II. THE RATE FILINGS.

NSWC's and SSWC's current rates were approved in the McLain Decision, which also required a filing for new rates after the systems were remediated. NSWC's and SSWC's applications were filed on August 31, 2010 using a March 31, 2009 test year. During the test year, the two entities' respective adjusted gross revenues from water utility service were $191,966 and $444,136.[26] The adjusted operating income was ($78,045) and $23,856, leading to operating income deficiencies of $151,340 and $122,743 and returns on rate base of negative 11.82 percent and 1.81 percent for NSWC and SSWC, respectively.[27] Thus, rate relief is warranted, irrespective of the Commission filing requirements.

BVWC's present rates were approved by the Commission in Decision No. 65350 (November 1, 2002). At that time, BVWC received a very small increase in revenues based on a test year ending December 31, 2000. Thus, it will be nearly a decade between rate increases for BVWC's customers, during which time much has changed as discussed above. During the test year ending March 30, 2009, the same one used by NSWC and SSWC, BVWC's adjusted gross revenue was $3,526,033.[28] The adjusted operating income was $138,435 for a return on rate base equal to only 2.34 percent.[29] In other

[24] *See* Sorensen NSWC Dt. at 6 – 7; *see also* Sorensen SSWC Dt. at 6 – 7.
[25] *See* NSWC Final Schedule B-2, pages 3.3 – 3.5, and SSWC Final Schedule B-2, pages 3.3 – 3.5.
[26] NSWC Final Schedule A-1; SSWC Final Schedule A-1.
[27] *Id.*
[28] BVWC Final Schedule A-1.
[29] *Id.*

words, BVWC also is entitled to rate increases under any circumstances.

On a stand-alone basis, the Applicants are requesting revenue requirements as follows:[30]

Utility	Final Rate Base	Total Operating Expenses	WACC	Total Revenue Requirement	Total Increase in Revenue Requirement
BVWC	$5,914,568	$562,475	9.69%	$4,216,640	$690,607
NSWC	$660,315	$73,295	11.10%	$398,939	$206,973
SSWC	$1,320,713	$146,599	11.10%	$635,713	$191,577

The final proposed rates for each of the Applicants on a stand-alone basis are reflected in the Final "H" Schedules, along with proposed low-income and hook-up fee tariffs.[31]

III. THE REQUESTED CONSOLIDATION.

The need for NSWC and SSWC to seek new rates following the completion of the necessary capital improvements also presents an opportunity to draw to a close the McLain story by consolidating NSWC and SSWC into BVWC. At the outset, the Applicants requested and Judge Rodda granted the procedural consolidation of the three separate rate applications into one docket.[32] Thus, the parties and the Commission have had the opportunity in this docket to directly compare the consolidation proposal with the continued operation of the three water providers on a stand-alone basis. As proposed, BVWC would be the sole surviving public service corporation, which makes this more than just a "rate" consolidation, and the Commission must order transfer of NSWC's and SSWC's CC&Ns to BVWC pursuant to A.R.S. § 40-285. The Company then would have

[30] BVWC Final Schedules A-1 and D-1; NSWC Final Schedules A-1 and D-1; SSWC Final Schedules A-1 and D-1.

[31] BVWC Final Schedule H-3; NSWC Final Schedule H-3; SSWC Final Schedule H-3; Applicants' September 16, 2010 Notice of Filing at Exhibits 5 and 6.

[32] November 10, 2009 Rate Case Procedural Order (Consolidates Dockets).

9,600 total customers receiving water service under a single set of tariffs.

Conceptually, consolidation can provide many benefits to water utilities and their customers. Beyond concept, however, consolidation, including rate consolidation, must make sense under the specific circumstances presented.[33] Here, even RUCO agrees that the proposed consolidation makes sense.[34]

The arguments for and against consolidation are discussed in detail in an EPA publication relied upon by both the Company and RUCO in this proceeding.[35] Several of the commonly cited advantages of consolidation are present in this case. From the broader perspective, this consolidation request is the next logical step in a small-region regionalization.[36] The Applicants all operate multiple water systems in the same distant corner of the state, all are situated in the general area surrounding Sierra Vista, the largest city in Cochise County, and make up their own small "region."[37] As such, consolidation could aid economic development in the area by creating regional ratepayer equity.

As Ms. Jerich discusses, small rural water providers often have a difficult time affording "clean, safe and reliable drinking water."[38] The cost of compliance with the network of federal and state regulations are often insurmountable for small system customers; yet society, and certainly RUCO, and the Applicants' shareholders want all customers to enjoy the same quality of service as customers on larger systems.[39] Consolidation and regionalization can help to ensure that more customers receive quality water service by creating a larger customer base over which to spread the costs of plant and a return, leading to a lower cost per connection.[40] The risks are shared as well. At

[33] Sorensen Joint Dt. at 3:9-13; Jerich Supp. Dt. at 14:1-5, 15:18 – 16:8; Tr. at 905:4 –906:10; 923:8-16.

[34] Jerich Supp. Dt. at 14:1-5, 15:18 – 16:8; Tr. at 905:4 – 906:10, 923:8-16.

[35] Jerich Supp. Dt., Exhibit A ("EPA-NARUC Publication") at 4.

[36] Sorensen Joint Dt. at 4:21 – 5:2.

[37] *Id.* at 5:3-8.

[38] *See* Jerich Supp. Dt. at 10:1-4.

[39] Sorensen Joint Dt. at 6:12-16.

[40] *Id.* at 10:13-19 *citing* EPA-NARUC Publication at vii and 4; *see also* Surrebuttal Testimony of Jodi A.

any given point in time any portion of any water system can require significant, and sometimes rapid, capital investment.[41] Regulators have recognized this shared-risk, shared cost idea in support of consolidation as well.[42] Meanwhile, investors like anything that helps facilitate recovering a return on their investment, which in turn encourages investment, which is yet another factor identified by regulators as supporting consolidation.[43]

Consolidation also will lead to regulatory and administrative efficiencies.[44] The Commission will be regulating one utility with roughly 10,000 customers instead of three utilities, two of which have less than 1,000 customers. As a consolidated system, the Company will have a total of 42 wells, with a storage volume of 7.134 MG.[45] There will be one rate case in the future rather than three. The consolidated systems also can benefit through increased operational efficiencies. Shared-services models are recognized as a factor in favor of consolidation[46] and, as noted above, Liberty Water already implemented its shared-services model in all three of these water utilities. Consolidating the three systems under a single entity could reduce costs further by reducing record keeping and the costs for implementation of BMPs and water sampling programs, among others.[47] In the event of further cost-savings, all of the customers benefit because all customers are sharing the total cost of service in a fair and equitable fashion given all of the prevailing considerations that go into determining what is in the public interest.

So far, the benefits discussed come under the heading of operational or

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Jerich, filed August 12, 2009 in Docket No. W-01445A-08-0440 ("Jerich AWC Testimony"), at 7 – 8.
[41] *Id.*
[42] Jerich AWC Testimony at 7 – 8; EPA-NARUC Publication at vii and 4.
[43] Sorensen Joint Dt. at 10:19-22 *citing* Jerich AWC Testimony at 7 – 8, EPA-NARUC Publication at vii and 4.
[44] Sorensen Joint Dt. at 9:18-19.
[45] Sorensen BVWC Dt. at 3:10-17; Sorensen NSWC Dt. at 3:8-15; Sorensen SSWC Dt. at 3:6-11.
[46] Sorensen Joint Dt. at 9 *citing* EPA-NARUC Publication at 4.
[47] *Id.* at 10:5-7.

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administrative benefits and would occur to a substantial degree even without rate consolidation. Rate consolidation, however, adds not only administrative efficiencies of its own, but the opportunity to mitigate the impact of large rate increases.[48] In this case, customers of NSWC and SSWC (with a 5/8 x 3/4 inch meter) will experience increases of $50.08 and $20.36 per month on average, or 116.25 percent and 47.80 percent, respectively, without consolidation.[49] On the other hand, with consolidation, the average rate ***decreases*** would be $14.71 and $14.64 for NSWC and SSWC, or 34.14 percent and 34.38 percent, respectively. Thus, in the end, under the Company's proposed consolidation, including consolidated rates, an average residential customer in the BVWC system will pay roughly $4.07 more per month if consolidation is granted.[50] The Company asserts that this amount does not upset the delicate balance all stakeholders require between "subsidization," the boogeyman of rate consolidation.[51] In fact, customers in BVWC are getting something for their part in the consolidation – more water supply.[52]

As discussed above, BVWC's South System faces water supply issues. As a consequence, the ability to share water from the SSWC system is another significant factor in favor of the proposed consolidation. The BVWC South System is physically connected to the SSWC Horseshoe subsystem and the Cochise and Horseshoe sub-systems of SSWC are adjacent to the BVWC South Nicksville subsystem.[53] Water can flow in either direction between BVWC's South System and SSWC, and BVWC's South System desperately needs the water that SSWC can provide. Access to the water supplies

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[48] *Id.* at 4 *citing* EPA-NARUC Publication at 57*; see also* Jerich Supp. Dt. at 7.

[49] Applicants Final Schedule H-2, page 1; NSWC Final Schedule H-2, page 1; SSWC Final Schedule H-2, page 1.

[50] Applicants Final Schedule H-2, page 1; BVWC Final Schedule H-2, page 1.

[51] Sorensen Joint Dt. at 10:18-22 *citing* Jerich AWC Testimony at 7 – 8, EPA-NARUC Publication at vii and 4.

[52] Sorensen Joint Dt. at 9:5-7.

[53] *Id. See also id.* at 5:14-15, 9:8-10.

will directly benefit BVWC's customers by reducing the amount of future capital expenditures for well and storage facilities.[54] As such, the interconnection is another factor supporting the proposed consolidation.

In light of the overwhelming evidence in favor of the proposed consolidation, it isn't surprising that there has been no opposition raised in this proceeding. **As discussed,** RUCO supports the consolidation of the three water providers into the Company, as well as single tariff pricing.[55] Staff also supports the requested consolidation and has proposed its own fully consolidated rates using Staff's revenue requirement and rate design.[56] In fact, there is no evidence in the record against the requested consolidation. As the Commission's public ratemaking process has afforded all interested stakeholders (including other agencies and government bodies) the opportunity to raise concerns against the request, and having received none, there is substantial evidence to support and ample reason to find the requested consolidation in the public interest.

LAW AND ARGUMENT

I. SUMMARY OF ISSUES NO LONGER IN DISPUTE

The parties should be commended for their cooperation and the results of their efforts to resolve several issues that remained in dispute through much of the proceeding. These significant issues, which are not in material dispute at this stage of this consolidated rate case, are each summarized below.

A. ADITs.

Accumulated Deferred Income Taxes are an important but complicated and somewhat soporific aspect of ratemaking. ADITs must be determined and all elements considered for tax purposes, ratemaking purposes and to be fair to the utility and the

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[54] *Id.* at 9:8-15.

[55] Jerich Supp. Dt. at 14:1-5, 15:18 – 16:8; Tr. at 288:23 – 289:4, 905:4 – 906:10, 923:8-16.

[56] Brown Supp. Dt. at 3:20 – 4:3, 7:14 – 8:8; Brown Sb. at 2:24 – 3:20; Tr. at 873:2-5.

customer.[57] The Company's witness used the same methodology he has used in all of the recent rate cases for Liberty Water's utilities, and he made adjustments at each stage of the proceeding as new information was developed and as other adjustments impacted the amount of ADITs.[58] There is nothing unusual about that.

RUCO, on the other hand, first argued that ADITs should be determined by allocation from the ultimate parent company.[59] This methodology, also advocated by RUCO in the pending RRUI rate case, discards all company-specific information in favor of reliance on the assets of third-parties generating power and delivering water and sewer service in various parts of Canada and North America.[60] The Commission expressly rejected this methodology in Decision No. 69164 (December 5, 2006). Then, RUCO made this recommendation its alternative recommendation and made its own calculation following a methodology similar to that of the Company.[61] Unfortunately, though, RUCO insisted that unrefunded AIAC was not CIAC, a difference of opinion impacting roughly $2 million of rate base.[62] Finally, after the first days of trial, RUCO accepted that the AIAC-CIAC debate was a zero-sum game.[63] Thereafter, the Company corrected additional mathematical errors in RUCO's calculation, and upon the filing of the Final Schedules, the material difference between the Company and RUCO on ADITs is the different plant numbers.[64]

Staff also took an indirect route to its final position in accord with the Company on ADITs. In direct, Staff removed more than $3 million of rate base in its ADIT

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[57] Bourassa Rb. at 18:19-22.
[58] *See, e.g., id.* at 16:10-16; Tr. at 618:4-14.
[59] Coley Dt. at 8:14-20, 24:12 – 25:11.
[60] *Id.*; Bourassa Rb. at 13:12 – 14:10.
[61] Coley Sb. at 3:2 – 4:2, 11:11 – 12:11.
[62] Tr. at 217:15 – 238:20; Bourassa Rj. at 16:9 – 17:13.
[63] Tr. 617:11-18. *See also id.* at 544:13 – 545:1.
[64] *E.g.*, RUCO Final Schedules SURR RLM-5(A) and SURR RLM-5(B).

calculation, an amount roughly six (6) times its net final DIT liability.[65] In surrebuttal, based on information provided by the Company to help Staff following the filing of its direct, Staff's ADIT recommendation was reduced to a net deferred tax liability of roughly $540,000, roughly $30,000 lower than the Company's.[66] Then, at trial, Staff sought to further modify its position on ADIT. Unfortunately, additional errors made in the calculation led to positional changes by Staff during the hearing.[67] Although the Company found additional errors in Staff's final schedules, the Company understands Staff's position has not changed, and has noted in the footnote above the Company expects Staff to file corrected schedules with the opening brief.

B. <u>Allowance for Funds Used During Construction (AFUDC).</u>

In direct, Staff removed nearly $70,000 from the NSWC and SSWC rate bases as unsupported AFUDC.[68] Then in surrebuttal, Staff reversed this adjustment and accepted the Company's position without explanation.[69] RUCO also accepted the Company's revised amount in its surrebuttal filing.[70]

C. <u>Retirements.</u>

Throughout this proceeding, Staff has expressed a great deal of concern over the Applicants' failure to retire certain plant on its books and records.[71] In direct, Staff removed more than $2.5 million of plant in service for retired plant.[72] It is true that certain retirements did not occur before this rate case, and the Company's response to Staff's concerns over retirement of plant no longer used and useful is discussed in more

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[65] *Compare* Brown Dt. at 9:21-24 *with* Final Schedules CSB-10 (BVWC), CSB-9 (NSWC), and CSB-9 (SSWC). The Company understands that Staff will be filing a corrected schedule with its ADIT calculation in its Opening Brief.

[66] Brown Sb. at 17:23 – 18:16.

[67] Tr. at 939:13-25.

[68] Brown Dt. at 14:8 – 15:5.

[69] Brown Sb. at 9:8-15.

[70] Moore Sb. at 8:10 – 9:4.

[71] *See, e.g.,* Brown Dt. at 15:13 – 16:6; Brown Sb. at 8:5-10; Tr. at 874:24 – 875:3, 886:23 – 888:18.

[72] Brown Dt. at 15:6 – 17:11.

detail below in Section II(G). Further, on surrebuttal, Staff accepted the Company's proposed retirement amount, which amount was roughly 50 percent of the adjustment first recommended by Staff.[73] In surrebuttal, RUCO also accepted the Company's recommend adjustment for plant retirements.[74]

D. <u>Regulatory Assets Balance.</u>

In the McLain Decision, the Commission approved regulatory asset treatment of up to $300,000 in costs related to Liberty Water's acquisition of the former McLain Systems.[75] At that time, it could not be known how much would be incurred for the transaction and all of the related regulatory and bankruptcy proceedings, but it was always expected that there would be a true-up in the rate case that the Commission also ordered in the McLain Decision. In their filings, NSWC and SSWC reported a total of approximately $300,000 in acquisition costs, allocated $64,620 to NSWC and $235,380 to SSWC. Claiming it received supporting documentation too late (more than a month before the filing date), Staff removed the full $300,000 from rate base.[76] However, in surrebuttal, Staff testified that it had conducted its review of the supporting documentation and accepted the Company's proposed total acquisition costs of $155,378.[77] RUCO is also in agreement on this issue.[78]

E. <u>Transportation Expense.</u>

Staff initially made an adjustment to the level of transportation expense to reach a more "normalized" amount.[79] Then, in surrebuttal, after the Company removed certain costs that Staff questioned, the parties agreed on a level for this expense.[80]

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[73] Brown Sb. at 8:12-23.
[74] Moore Sb. at 7:6 – 8:8.
[75] Brown Dt. at 17:19-18:25 *citing* McLain Decision at 35.
[76] Brown Dt. at 19:4-21.
[77] Brown Sb. at 10:16 – 11:12.
[78] Moore Sb. at 9:6-20.
[79] Brown Dt. at 25:1 – 26:5.
[80] Brown Sb. at 25:1 – 26:5; Moore Sb. at 12:16 – 13:16; Bourassa Rj. at 6:1-6.

F. Outside Services Expense – Competitive Bidding.

In direct testimony, Staff recommended reducing outside service expense by approximately $48,000 because, in summary, these were related party transactions that were not subject to "competitive bidding."[81] Staff suggested that Liberty Water ought to competitively bid its employees. The Applicants vigorously rebutted Staff's adjustment providing evidence that its costs were reasonable, supported by uncontested market data and consistent with several prior rate cases in which Staff, and the same Staff witness, made no similar adjustment.[82] Nevertheless, Staff did not relent. Instead, Staff categorically rejected the Company's evidence and arguments and accused them of "self-dealing" and taking unfair competitive advantage.[83] Then, near the end of trial, Staff simply dropped its position that a competitive bid was needed and has reversed its adjustment.[84] Well, at least Staff testified it would. Staff's final schedules did not correctly reflect the reversal of its earlier adjustment, something else the Company has brought to Staff's attention. RUCO took no position on this issue.

G. Other Undisputed Issues.

The parties are in full agreement over the Low Income Tariff, the form of which is materially identical to the form jointly agreed to in the pending RRUI rate case.[85] The parties also reached agreement over water testing expense after the Company corrected some minor errors.[86] The Company accepted Staff's recommendations regarding non account water following clarification in Staff's surrebuttal testimony.[87] There is also no disagreement over the methodology for determining property and income taxes. Finally,

[81] Brown Dt. at 37:18 – 38:18.

[82] Sorensen Rb. at 10:6 – 11:10; Sorensen Rj. at 6:22 – 7:20.

[83] Brown Sb. at 27:14 – 30:3.

[84] Tr. at 728:19 – 729:1; Staff Final Schedule CSB-14 (BVWC). The Company understands that with its Opening Brief Staff will be filing a corrected schedule.

[85] Sorensen Rj. at 12:1-6; Tr. at 68:4 – 70:24.

[86] Sorensen Rb. at 3:11 – 4:3; Sorensen Rj. at 2:11-15; Scott Sb. at 1:21 – 3:5; Moore Sb. at 12:1-14.

[87] Tr. at 66:13 – 67:21.

as mentioned above, there is no dispute over the requested consolidation of NSWC and SSWC into BVWC. BVWC also accepted a corporate cost allocation based on 70 total facilities rather than dispute the number of facilities actually owned by APUC.[88]

H. Final Comments on Resolution of Previously Disputed Issues.

As a result of there being fewer issues in dispute, the Company voluntarily reduced its rate case expense by $75,000.[89] Unfortunately, RUCO has sought to use the Company's success in reducing issues to further reduce rate case expense asserting that this rate case was "not complicated."[90] The Company will address the issue of rate case expense below (in Section II(H)); for now, however, it needs to be pointed out that the effort to reach accord on numerous issues involved months of formal and informal discovery, correction of multiple mistakes made by Staff and RUCO, and adjustment every time Staff and/or RUCO changed its position on an issue. There can be no legitimate dispute that this effort by the Company had a substantial and significant impact on the time and cost of this proceeding, as discussed herein, an impact that should not be ignored.

II. REMAINING ISSUES IN DISPUTE.

A. Overview.

Liberty Water supports and fully expects Staff's and RUCO's careful scrutiny of BVWC's rate case, including rate base, revenue requirement and rate design issues.[91] But careful scrutiny does not entitle Staff and/or RUCO to presumptively deny rate base treatment or automatically reduce the Company's revenue requirement. Staff and RUCO still must satisfy their evidentiary burden of proof relating to their disallowances, rate base treatment and rate design. Further, Staff and RUCO must follow and adhere to

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[88] Eichler Rb. at 24.
[89] Tr. at 420:18 – 421:6.
[90] *Id.* at 1009 – 1011.
[91] *See, e.g.*, Sorensen Rj. at 5:18-19.

established ratemaking principles and standards. Staff and RUCO cannot and should not single out Liberty Water by applying different ratemaking standards to Liberty Water for the sole purpose of reducing rates. It is a violation of both due process and Arizona law for Staff and/or RUCO to presumptively reject or oppose the Company's rate base, revenue requirement and/or rate design issues based on undisclosed or self-serving standards.[92]

Nor can Staff and RUCO rely solely on their unsubstantiated beliefs or generic opinions relating to the rate base, revenue requirement and rate design issues. Under Arizona law, more than just *any* evidence is required to support Staff's or RUCO's disallowances. "Substantial evidence is evidence which would permit a reasonable person to reach the trial court's result."[93] Thus, a Commission decision must be "rationally based on evidence of substance."[94] "Mere speculation and arbitrary conclusions are not substantial evidence and cannot be determinative."[95] Unfortunately, Staff's and RUCO's testimony is premised almost exclusively on speculation, assumption and presumption. Put simply, Staff and RUCO failed to sustain their burden of providing substantial evidence to support their disallowances. For good reason, arbitrary or unsupported assumptions don't have any place in the ratemaking process. Put another way, Staff or RUCO can't avoid their burdens of providing substantial evidence in the guise of reducing rates. As a matter of fundamental fairness, Staff and RUCO must be held to the same burden of providing their cases as the Company.

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[92] *Arizona Public Service Company*, Decision No. 55931, 91 P.U.R. 4th 337, 350 (April 1, 1988) (emphasis added). *See also State v. Thompson*, 204 Ariz. 471, 65 P.3d 420 (2003)(stating that "laws must provide explicit standards for those charged with enforcing them..."); *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966) (stating that "a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves ... judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case").

[93] *Estate of Pousner*, 193 Ariz. 574, 579, 975 P. 2d 704, 709 (1999). *See also Denise R. v. Ariz. Dep't of Economic Security*, 2009 WL 1451452 (Ariz. App. 2009).

[94] *City of Tucson v. Citizens Utils. Water Co*, 17 Ariz. App. 477, 481, 498 P.2d 551, 555 (1972).

[95] *Tucson Elec. Power v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 245, 645 P.3d 231, 237 (1982).

B. **Summary of Legal Framework for Ratemaking in Arizona.**

In Arizona, the Commission is responsible for setting "just and reasonable" rates and charges for utility services furnished by utilities.[96] The process followed by the Commission in setting rates that are "just and reasonable" has been summarized as follows:

> The general theory of utility regulation is that total revenue, including income from rates and charges, should be sufficient to meet a utility's operating costs and to give the utility and its stockholders a reasonable rate of return on the utility's investment. To achieve this, the Commission must first determine the "fair value" of a utility's property and use this value as the utility's rate base. The Commission then must determine what the rate of return should be, and then apply that figure to the rate base in order to establish just and reasonable tariffs.[97]

Nearly 100 years of decisions by Arizona courts have required the Commission to set rates that will produce sufficient revenue to allow the utility to recover its operating expenses and earn a reasonable rate of return on the fair value of its property devoted to public service.[98] Thus, as the Arizona Court of Appeals explained in *Scates*:

> [T]he rates established by the Commission should meet the overall operating costs of the utility and produce a reasonable rate of return. It is equally clear that the rates cannot be considered just and reasonable if they fail to produce a reasonable rate of return or if they produce revenue which exceeds a reasonable rate of return.[99]

While the starting point of a permanent rate application is the utility's actual, recorded results during the test year, those results must be adjusted to obtain a normal and

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[96] *See* Ariz. Const. Art. 15, § 3.

[97] *Scates v. Ariz. Corp. Comm'n,* 118 Ariz. 531, 533-34, 578 P.2d 612, 614-15 (App. 1978) (citations omitted). *See also US West Comm., Inc. v. Ariz. Corp. Comm'n*, 201 Ariz. 242, 244, 34 P.3d 351, 353, ¶ 13 (2001) (The "fair value [of the utility's plant and property] has been the factor by which a reasonable rate of return [is] multiplied to yield, with the addition of operating expenses, the total revenue that a corporation could earn.") (citing *Scates*).

[98] *See US West,* 201 Ariz. at 246, 578 P.2d at 355, ¶ 18 ("a line of cases nearly as old as the state itself has sustained the traditional formulaic approach" to setting rates).

[99] *Scates*, 118 Ariz. at 534, 578 P.2d at 615.

more realistic relationship between rate base, revenue and expenses that will be representative of the period *when the new rates are in effect.* The Commission's regulation defining the filing requirements in support of a proposed increase in rates and charges for service specifically contemplates consideration of post-test year circumstances. For example, the term "pro forma adjustments" is defined as:

> Adjustments to actual test year results and balances to obtain a normal or more realistic relationship between revenues, expenses and rate base.[100]

In this light, it is not enough for Staff or RUCO to simply claim an adjustment is supported because the applicant must prove all its costs are reasonably incurred, or because the Applicants did not give Staff what Staff thinks it needs in time for Staff to take a position.[101] The process and procedures the Commission follows to gather and consider evidence in setting rates are quasi-judicial in character. Perhaps the clearest statement of the Commission's duties is found in *State ex rel. Corbin v. Ariz. Corp. Comm'n*, 143 Ariz. 219, 223-24, 693 P.2d 362, 366-67 (App. 1984), which explained:

> [A proceeding to fix rates] carries with it fundamental procedural requirements. There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. Nothing can be treated as evidence which is not introduced as such. ... Facts and circumstances which ought to be considered must not be excluded. Facts and circumstances must not be considered which should not legally influence the conclusion. Findings based on the evidence must embrace the basic facts which are needed to sustain the order. ...
>
> A proceeding of this sort requiring the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings, has a quality resembling that of a judicial proceeding. Hence it is frequently described as a proceeding of a *quasi judicial* character. The requirement of a "full hearing" has obvious reference to the tradition of judicial

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[100] A.A.C. R14-2-103(A)(3)(i).

[101] *See, e.g.* Brown Dt. at 18:27 – 19:21; Brown Sb. at 9:17 – 10:5.

> proceedings in which evidence is received and weighed by the trier of the facts. The "hearing" is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. The "hearing" is the hearing of evidence and argument.[102]

Under the Arizona Administrative Procedure Act ("APA"), A.R.S. 41-1001, *et seq.* the Commission's "final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings."[103] "Findings of fact shall be based exclusively on the evidence and on matters officially noticed."[104] "It is not permissible for . . . any administrative body, simply to parrot general statutory requirements or rest on broad conclusory statements."[105] Instead, "findings of fact by the Commission must show which evidence it accepts as competent and worthy of belief, and that which it rejects."[106]

Thus, if Staff and RUCO want to deviate from the test year, or reject some cost that the Applicants show to be reasonable and prudent, it is Staff or RUCO that must sustain their evidentiary burden by showing substantial evidence to support the position taken. Otherwise, the quasi-judicial process won't be effectuated and the Commission's decisions will not be supported by the requisite substantial evidence.

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[102] *Id.* at 224, 693 P.2d at 367, *quoting Morgan v. United States*, 298 U.S. 468 (1936).

[103] A.R.S. § 41-1063.

[104] A.R.S. § 41-1061(G).

[105] *Rodriguez v. Prince George's County*, 558 A.2d 742, 748 (Md. App. 1989).

[106] *Colorado-Ute Elec. Assoc. v. P.U.C.*, 760 P.2d 627, 641 (Colo. 1988). *See also Matter of Water Use Permit Applications*, 9 P.3d 409, 475-76 (Haw. 2000) ("where the record demonstrates considerable conflict or uncertainty in the evidence, the agency must articulate its factual analysis with reasonable clarity, giving some reason for discounting the evidence rejected"); *Porter v. South Carolina Pub. Serv. Comm'n*, 507 S.E.2d 328, 332 (S.C. 1998) (a "recital of conflicting testimony followed by a general conclusion is patently insufficient"), *quoting Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n*, 351 S.E.2d 151, 152 (S.C. 1986).

C. Issues in Dispute - Central Cost Allocation

1. Liberty Water's Shared Services Model Works and Should Be Fully Approved by the Commission.

Although the parties have made significant progress on the APT central office cost allocations, the parties remain at odds over the allowable costs. The only cost allocation issues in dispute relate to Central Office Costs allocated from APT to the Company. Staff and RUCO do not dispute the affiliate cost allocations through Algonquin Water Services (AWS) d/b/a Liberty Water to the Company.[107]

On the APT costs, the Company has shown that the Central Office Costs were actually incurred by APT/BVWC, that those costs are reasonable ($1.09/month per customer) and that the APT costs are necessary expenses under Liberty Water's business model.[108] The APT costs are necessary, among other things, in order for BVWC to have access to capital from APUC, a publicly traded company. The Company has shown that its customers benefit from the APT services, including access to capital financing, reduced operating costs and sound fiscal management.[109]

Based on the evidentiary record in this case and established ratemaking standards, the APT cost allocations should be approved for five reasons. First and foremost, Liberty Water's shared services model allows Liberty Water to provide high quality utility service with low operating expenses.[110] Put simply, the Liberty Water business model works. Here, the APT cost allocations allow BVWC to have continuing and ready access to financial capital for utility operations. Liberty Water's acquisition and remediation of the

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[107] Tr. at 623 – 624, 782.

[108] Eichler Rb. at 16 – 17, Exhibit PE-RB1, Exhibit PE-RB3; Tr. at 387 – 392.

[109] Eichler Rb. at 12 – 17, Exhibit PE-RB2; Tr. at 381 – 392.

[110] Eichler Rb. at 9 – 11, 13 – 14; Eichler Rj. at 4 – 6; Tr. at 394 – 396.

McLain Systems discussed above is a perfect example.[111] Over and over again, Liberty Water has invested capital to resolve problems and render high quality utility service.[112]

Second, the APT costs provide substantial, direct benefits to BVWC. The primary benefit is continuing and ongoing access to capital markets on the Toronto Stock Exchange (TSX).[113] The evidence is **undisputed** that BVWC would not have access to capital from the TSX without the APT costs.[114] The record is **undisputed** that Bella Vista, Northern Sunrise and Southern Sunrise all received capital from APUC.[115] In fact, Liberty Water invested $1.6 million of capital from the TSX in plant upgrades and improvements to the Northern and Southern Sunrise systems.[116] Staff's argument that the APT costs benefit Bella Vista only "incidentally" is contrary to these **undisputed** direct benefits.[117]

Third, not only do the APT costs ensure that BVWC has ongoing access to capital markets, but the actual cost to ratepayers for the APT cost allocations is nominal, especially given the benefits received. **The total cost for each customer of BVWC for the APT costs is $1.09 per month or $13.08 per year.**[118]

Fourth, among 23 comparable water companies, BVWC ranks eighth (8th) in terms of total operating costs.[119] BVWC's operating cost per customer of $396.77 is

[111] McLain Decision at 10 ("Staff supports the recovery of [acquisition costs] in this case as it involved an extremely troubled utility that will benefit from having a well capitalized, safety oriented and efficient operator.").

[112] Liberty Water's success stories include the McLain Systems, improvement of service for Rio Rico, resolving odor problems at Black Mountain, and fixing a developer owned system for Gold Canyon Sewer. Eichler Rb. at 14.

[113] Eichler Rb. at 14 – 16, Exhibit PE-RB1 at 10 – 20; Eichler Rj. at 13 – 14.

[114] Tr. at 395 – 396 ("Q. Would that money have been available to Northern Sunrise and Southern Sunrise without the services provided by APT? A. No, they wouldn't. The primary function of the APT costs is to ensure ongoing access to capital.")

[115] *Id.*

[116] *Id.* at 642 – 644, 662 – 664.

[117] Brown Sb. at 23; Tr. at 840 – 841.

[118] Eichler Rb. at 16 – 18, Exhibit PE-RB3; Tr. at 390 – 392.

[119] Tr. at 392 – 393; Eichler Rb. at 25, Exhibit PE-RB4; Eichler Rj. at 14, Exhibit PE-RJ3.

substantially less than the average cost per customer for those 23 water companies of $467.91.[120] BVWC's total operating costs per customer have ***decreased*** under Liberty Water as compared to BVWC as a stand-alone entity.[121] Finally, the APT cost allocations should be approved because Staff and the Commission have approved the corporate cost allocation models used by Global Water (Global) and Arizona-American Water Company (Az-Am), which mirror the cost allocation model used by Liberty Water.[122]

2. <u>The Cost Allocation Amounts In Dispute.</u>

In the Company's Final Schedules, the total adjusted APT Central Office Cost pool is $3,567,363.[123] For the consolidated Company, 75.71% of that Central Office Cost pool is allocated to APUC and its unregulated facilities (46 facilities) and 24.29% is allocated to Liberty Water's Utility Infrastructure Group (17 regulated utilities, including the three applicants).[124] ***Those numbers bear repeating—75.71% of the APT costs are allocated to APUC and its unregulated facilities.*** Only $866,360 of the pool is allocated to the 17 utilities owned and operated by APUC, with 14.52% of those costs allocated to the Company, which equals $125,830.[125] ***Again, the total APT Costs allocated to the Company is $125,830.***

In its Final Schedules, Staff disallows $3,354,294 or 94 percent of the Central Office Cost pool.[126] Staff disallows 100 percent of the APT costs for Management Fees, Stockholder Communications, Trustee Fees, Escrow Fees, Rent and License Fees. Staff's APT cost pool consists of $68,081 in Audit fees, $46,980 in Tax Services, $13,853 in

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[120] *Id.*

[121] Tr. at 387 – 388; Eichler Rb. at 25 – 26, Exhibit PE-RB2.

[122] Eichler Rj. at 4, 17 – 18, Exhibit PE-RJ4; Tr. at 398 – 402; Ex. A-21; Ex. A-26; Ex. A-29.

[123] Applicants Final Schedule C-2, page 8.

[124] *Id.*

[125] *Id.*

[126] Staff Final Schedules CSB-13, page 1 (BVWC), CSB-12, page 1 (NSWC), and CSB-12, page 1 (SSWC).

General Legal Expenses, $45,220 in Other Professional Services, $26,129 in Office Expenses and $18,980 in Depreciation Costs.[127] Staff allows a total of $219,244 in APT Central Office Costs as representative of the total reasonable cost of all of the services APT provides to be spread across 70 entities.[128] Staff then allocates 1.47% of that $219,244 pool each to Bella Vista, Northern Sunrise and Southern Sunrise, which equals $3,224.17 for each utility.[129] Staff allows a total of $9,672.51 in APT costs.[130]

In its final schedules, RUCO allows $416,941 in total APT costs.[131] RUCO then uses the Company allocation methodology and allocates 25.35% of those costs to the 17 regulated utilities, which equals $105,703.[132] In turn, RUCO allocates 14.52% of that cost pool to the Bella Vista Companies, which results in a total allocation of $15,352.[133]

3. **<u>The Commission Should Approve the APT Cost Allocations.</u>**

Staff's and RUCO's objections to the APT costs focus on two primary arguments: (1) the APT costs primarily benefit APUC by generating profit for shareholders or facilitating business growth; and (2) the APT invoices are not directly traceable to Applicants.[134] Staff and RUCO fail their burden of proof on both arguments. Put simply, Staff and RUCO have failed to rebut the Company's showing that the APT costs are

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[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] *Id.* With $9,762.51 in APT costs, the monthly cost allocations would equal $813.54. With 9,610 customers for the consolidated Bella Vista companies, Staff's allocation would equal $0.08 per month per customer. Put another way, Staff apparently expects APT to provide financial planning, access to capital markets, tax and audit services, general legal services, human resources and financial accounting, consolidated tax filings, fillings with Canadian securities administrators and computer services for a whopping total of $0.08 per month per customer.

[131] RUCO Final Schedule SURR RLM-11(A), page 1.

[132] *Id.*

[133] *Id.*

[134] Brown Dt. at 33; Coley Dt. at 29.

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necessary costs under a shared service model designed and used to provide high quality service, while ensuring ongoing access to financial capital.[135]

a. **The Role of APUC,[136] APT and Liberty Water.**

APUC owns 46 electric facilities and 17 water and wastewater facilities in Canada and the United States.[137] APUC is publicly traded on the Toronto Stock Exchange (TSX).[138] Like publicly traded companies in the United States, APUC is subject to various public reporting, financial, audit and other rules and requirements of the TSX and Canadian securities laws.[139] As a publicly traded entity, APUC's principal source of equity capital stems from sales of shares on the TSX.[140] Liberty Water operates the Company, along with 14 other regulated water and sewer utilities in Arizona, Texas, Missouri and Illinois.[141] Under this shared-services portion of the APUC model, Liberty Water provides all day-to-day administration and operations personnel for these entities.[142] In addition, APT provides financial, management, compliance, administrative and support services to the regulated utilities operated by Liberty Water, as well as the unregulated facilities owned by APUC.[143]

It is **undisputed** that BVWC could not obtain capital from the capital markets without incurring the APT costs.[144] Mr. Coley agreed that APUC and BVWC would not

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[135] Eichler Rb. at 9.

[136] APUC is the new entity at the top of the Algonquin corporate structure. The change from an income fund to a corporate stock structure resulted from a change in Canadian corporate and tax laws. That change in structure doesn't have any impact on the operation of the Company or any other liberty Water utility in Arizona. *See* Eichler Rb. at 4.

[137] *Id.* at 3.

[138] *Id.* at 3, Exhibit PE-RB1 at 1-5.

[139] *Id.*; Tr. at 413 – 415.

[140] Tr. at 412 – 413, 417 – 418, 642, 643 – 644.

[141] Eichler Rb. at 4, 8 – 10, Exhibit PE-RB1 at 4 – 7.

[142] *Id.*

[143] Eichler Rb. at 8 – 10, Exhibit PE-RB1 at 2 – 3.

[144] Eichler Rb. at 9 – 10, Exhibit PE-RB1 at 10 – 15; Tr. at 395 – 396.

have access to capital from the TSX without incurring the APT costs.[145] These facts disprove Staff's and RUCO's arguments that the APT costs can't be directly traced to Bella Vista.[146] ***The direct link is simple – BVWC used capital provided by APUC from the TSX for plant additions, and the capital was only available because of the costs incurred by APT. Since BVWC used that capital to provide service, ratepayers benefited and BVWC should pay its share of the APT costs.***

The arguments to the contrary are not persuasive. At hearing, Staff claimed that BVWC does not need to incur the APT costs to receive capital from APUC through the TSX.[147] That testimony is just plain wrong. As an entity owned by a publicly traded company (APUC), BVWC must be part of the parent company's consolidated audits and tax services in order for BVWC to receive funds from stock sales on the TSX.[148] Ms. Brown's suggestion to the contrary would be a violation of securities law and the TSX rules.[149] Further, both Staff and RUCO expressly testified that APUC should use its access to capital markets to the benefit of the Company, which means that the Company must share in the parent's costs to obtain that capital.[150] It would be patently unfair for Staff and RUCO to demand that APUC provide capital to the Company and then disallow an allocation of necessary APT costs to the Company.

b. <u>The APT Cost Allocation Methodology.</u>

At trial, Mr. Eichler presented a detailed paper entitled "Liberty Water Affiliate Cost Allocation Methodology," which is attached to his rebuttal testimony as Exhibit

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[145] Tr. at 641 – 643.
[146] Brown Dt. at 33; Coley Dt. at 29.
[147] Tr. at 838 – 839.
[148] Eichler Rb. at 9 – 10; Tr. at 395 – 396, 641 – 643.
[149] Tr. at 838 – 839.
[150] *Id.* at 186, 191 – 193, 355 – 356, 541 – 542, 628 – 631, 637 – 638.

PE-RB1. That paper explains in detail the APT cost allocations and demonstrates the benefits that BVWC and its customers receive from the services provided by APT.[151]

All of the APT costs are indirect costs and "common costs" under the NARUC Guidelines.[152] As indirect and/or common costs, the NARUC Guidelines state that such costs must be allocated to the regulated and unregulated entities.[153] These costs include professional services like third-party legal, accounting, tax, and auditing that are done for the benefit of BVWC.[154] ***APT's only business is to provide services to the facilities and utilities owned by APIF.***[155] These costs also include costs for licenses, fees and permits, IT, payroll, and HRIS maintenance contracts, as well as the rent and depreciation of office furniture and equipment and computers in the central office.[156] As indirect or common costs, they cannot be directly charged to any specific facility or utility.[157]

The APT allocation is made in two parts. The initial allocation is based on facility count—there are 70 total facilities, 17 of which are the regulated utilities operated by Liberty Water.[158] In turn, 17 divided by 70 is 24.29%, which means 24.29% of the total APT cost pool is allocated to Liberty Water.[159] The second phase allocates that 24.29% between the 17 regulated utilities based on customer count.[160] In opposing the APT allocations in all four recent Liberty Water rates cases, Staff hasn't articulated any reason that this allocation method is unfair or suggested a meaningful alternative.

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[151] Eichler Rb. at 10 – 15, Exhibit PE-RB1 at 7 – 15.
[152] *Id.*; Tr. at 382 – 384, 650, 652 – 653, 654 – 655; Ex. R-20.
[153] Ex. R-20 at 2, ¶¶ B(2), B(6).
[154] Eichler Rb. at 7 – 15, Exhibit PE-RB1 at 7 – 13.
[155] Eichler Rb. at 12 – 13.
[156] *Id.* at 7 – 15, Exhibit PE-RB1 at 7 – 13.
[157] Eichler Rb. at 26; Ex. R-20; Tr. at 655 – 656, 660.
[158] Eichler Rb. at 24.
[159] *Id.*
[160] *Id.* at 4 – 6, 24, Exhibit PE-RB1 at 6 – 12.

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c. BVWC Provides High Quality Utility Service With Reasonable and Low Operating Costs.

Staff and RUCO oppose the APT allocations even though it is **undisputed** that BVWC's operating costs are below the operating costs of other comparable utilities.[161] At trial, Mr. Eichler demonstrated that BVWC's total operating costs per customer for water service rank eighth lowest out of 23 utilities.[162] **Staff and RUCO did *not* dispute that testimony and evidence.** What's more, the average customer cost per month for the APT Central Office Costs is $1.09/month or $13.08 per year.[163] ***The monthly cost per customer for the APT services and continuing access to capital from the TSX is less than the cost of a Happy Meal at McDonalds.***

d. The APT Costs and Services Provide Substantial Direct Benefits to BVWC and Ratepayers.

To say the least, the notion that these allocated costs from APT do not benefit ratepayers or primarily benefit APUC is undercut by the very high level of service BVWC is providing to customers, a fact that Staff and RUCO don't contest.[164] Exhibit PE-RJ4 demonstrates that fact beyond question for the Bella Vista companies. That June 27, 2010 article from the Sierra Vista Herald includes comments from customers about Liberty Water's efforts to resolve the prior problems with the McLain systems. One customer even stated that he "was constantly calling the ACC (Arizona Corporation Commission) and talking to Kris Mayes about all the problems we were having. But there have been no problems with Liberty Water."[165]

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[161] Eichler Rb. at 25, Exhibit PE-RB3; Eichler Rj. at 14, Exhibit PE-RJ1, Exhibit PE-RJ2, Exhibit PE-RJ3; Tr. at 392 – 393.

[162] *Id.*

[163] Eichler Rb. at 16 – 17, Exhibit PE-RB3; Tr. at 390 – 391.

[164] Eichler Rb. at 10 – 11, Exhibit PE-RB3; Tr. at 412 – 415.

[165] Eichler Rb. at Exhibit PE-RB4.

APT provides four types of services to BVWC: (1) strategic management, which includes management fees, general legal services and other professional services; (2) capital access, which includes licenses/fees/permits, investor communications and escrow fees; (3) financial controls, which include audit services, tax services and director fees; and (4) administrative/overhead costs.[166]

Each of these APT costs provides substantial benefits to BVWC through access to capital and strong corporate governance.[167] To start, strategic management services are necessary for BVWC to provide service and obtain capital financing under the APUC business model.[168] Strategic management decisions are critical for any utility. The need for strategic management is even more pronounced for BVWC as a regulated utility that depends on access to capital for operational and capital needs.[169] It is undisputed that BVWC would not have access to capital from the TSX without the management and legal services provided by APT.[170] These legal services involve review of audited financial statements, annual information filings, Sedar filings (mandatory filings for companies listed on the TSX), tax issues and other similar legal costs. These services are a prerequisite for BVWC's continued access to capital markets on the TSX.[171]

As stated by Mr. Eichler, "one of the most important things that the APT costs provide is access to capital."[172] Staff conceded that BVWC and its customers benefit from access to capital markets:

> Q. And you would agree with the general notion that accept to capital markets on behalf of a parent company is a

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[166] *Id.* at 6 – 10, Exhibit PE-RB1 at 7 – 15.

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] Tr. at 412 – 414.

[171] Eichler Rb., Exhibit PE-RB1 at 12 – 15, Tr. at 416 – 417.

[172] Tr. at 412.

benefit to the utilities within the parent company's structure, fair?

A. Yes.

Q. And you would agree that Staff expects the parent company to use that access to capital markets for the benefit of the utilities and its ratepayers, fair?

A. Yes.

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Q. You understand that all three of those utilities actually used capital from the parent for plant improvements and other capital improvements for the utility operations, agreed?

A. Yes.

Q. And you heard the numbers yesterday, for example, that Northern Sunrise and Southern Sunrise got approximately $1.6 million in funding from the parent company to rectify the former problems under the McLain ownership, agreed?

A. Yes.[173]

Mr. Chaves even testified that Staff expects APUC to use its access to capital markets to benefit BVWC.[174]

Likewise, RUCO acknowledged the benefits provided to BVWC from access to capital through APT.[175] Mr. Coley testified that RUCO expects APUC to use its access to capital markets to benefit its regulated utilities, including BVWC.[176] He reiterated that the Bella Vista companies used and benefited from $1.6 million in capital provided through the TSX.[177] Likewise, Mr. Rigsby testified that a parent company's access to capital

[173] *Id.* at 541 – 542.

[174] *Id.* at 186. *See also id.* at 191 – 193.

[175] *Id.* at 628 – 631, 637 – 638.

[176] *Id.* at 631.

[177] *Id.* at 640 – 641.

markets for debt or equity is beneficial to utilities.[178] He also agreed that "there is a cost to maintain that access to capital markets."[179]

If Staff and RUCO expect APUC to provide capital to BVWC, then BVWC must pay its share of all the APT costs. Here, for instance, APT incurs license fees to ensure that APUC can participate in the TSX.[180] The benefit of these costs is undisputed—BVWC has access to capital only so long as APUC is able to access capital markets. ***The costs to BVWC's customers for the APT license fees are less than 1¢ per month.***[181] As stated by Mr. Eichler, if APUC didn't pay those license fees, it "couldn't be listed" on the TSX.[182] Escrow Fees to pay dividends are incurred in order to ensure that stockholders of APUC continue to maintain ownership and new investors are enticed to buy shares.[183] ***The costs to BVWC's customers for the APT escrow fees are less than 3¢ per month.***[184]

Similarly, investor communication costs are incurred by APT to comply with the filing and regulatory requirements of the TSX and Canadian law.[185] At trial, Mr. Coley acknowledged that Liberty Water must comply with these legal requirements as a publicly traded company.[186] ***The cost to BVWC's customers for shareholder communications is 4¢ per month.***[187] Financial control costs incurred by APT are another integrated piece of corporate governance. Taxes are paid on behalf of BVWC at the parent level as part of a consolidated tax return.[188] ***The cost to BVWC's customers for the APT tax services are***

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[178] *Id.* at 355 – 356.
[179] *Id.* at 356.
[180] Eichler Rb., Exhibit PE-RB1 at 11 – 13.
[181] Eichler Rb. at 17, Exhibit PE-RB3.
[182] Tr. at 418.
[183] *Id.* Eichler Rb., Exhibit PE-RB1 at 12.
[184] Eichler Rb. at 17, Exhibit PE-RB3.
[185] *Id.*, Exhibit PE-RB1 at 12 – 13.
[186] Tr. at 642 – 643.
[187] Eichler Rb. at 17, Exhibit PE-RB3.
[188] Eichler Rb. at 8 – 10, Exhibit PE-RB1 at 14; Tr. at 412 – 416.

14¢ per month.[189] Audit services are necessary to ensure that the regulated utilities are operated in a manner that meets audit standards and regulatory requirements.[190] ***The costs to BVWC's customers for the APT audit fees are 21¢ per month.***[191]

4. Staff's and RUCO's Presumptive Disallowance of 99% of the APT Cost Pool is Arbitrary and Excessive.

Liberty Water supports and appreciates Staff's and RUCO's careful scrutiny of the APT cost allocations.[192] But, as discussed above, Staff and RUCO still must satisfy their evidentiary burden of proof relating to their disallowances. In Decision No. 55931, this Commission specifically found that "the allocation of general corporate expenses among affiliates represents a pooling and sharing of expenses to minimize costs, not the sale of services to maximize revenues."[193] This Commission has established that affiliate cost allocations "must be closely scrutinized in a general rate case" but that "such heightened degree of scrutiny ***may not amount to a presumptive disallowance of all costs incurred as a result of transactions with affiliates***..."[194] That principle is controlling because Staff and RUCO have presumptively denied 99% of the APT costs, which is illegal and improper.

The Commission has not adopted any standards or rules governing affiliate cost allocations. Without any governing standards, review and determination of the cost pool is an "organic process" that necessitates give and take between the parties. Liberty Water has and continues to refine and improve its cost allocations based on Staff's and RUCO's concerns.[195] Liberty Water's overall goal is to achieve a fair allocation of the APT costs

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189 Eichler Rb. at 17, Exhibit PE-RB3.

190 *Id.*, Exhibit PE-RB1 at 13 – 15.

191 Eichler Rb. at 17, Exhibit PE-RB3.

192 Sorensen Rj. at 5 – 6.

193 *Arizona Public Service Co.*, Decision No. 55931, 91 P.U.R. 4th 337, 348 (April 1, 1988).

194 *Id.* at 350 (emphasis added).

195 Eichler Rb. at 18 – 20; Eichler Rj. at 8 – 10.

between its unregulated facilities and regulated utilities. Unfortunately, Staff and RUCO have singled out Liberty Water for cost reduction by applying different cost allocation standards to Liberty Water as compared to other Arizona utility holding companies.[196] It is a violation of both due process and Arizona law to presumptively deny the APT costs based on undisclosed standards.[197]

Read closely, the testimony of Ms. Brown and Mr. Coley does nothing more than state their beliefs or generic opinions that the APT costs do not benefit ratepayers. But more than just *any* evidence is required to support Staff's or RUCO's disallowance. "Substantial evidence is evidence which would permit a reasonable person to reach the trial court's result."[198] Thus, a Commission decision must be "rationally based on evidence of substance."[199] "Mere speculation and arbitrary conclusions are not substantial evidence and cannot be determinative."[200]

The testimony presented by Staff and RUCO on the APT costs, however, relies exclusively on speculation and presumption. According to RUCO's witness, for example, RUCO "***had to make some estimate, somewhat arbitrary adjustment*** to reflect that 25 percent allowance" for legal expenses, audits and tax services.[201] Even worse, Staff testified that its 90% disallowance of the APT costs was based principally on the fact that the APT invoices did not mention BVWC.[202] Staff's witness looked solely at the wording

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[196] Tr. at 404 – 405, 779, 798 – 799, 820 – 824.

[197] *Arizona Public Service Company*, Decision No. 55931, 91 P.U.R. 4th 337, 350 (April 1, 1988) (emphasis added). *See also State v. Thompson*, 204 Ariz. 471, 65 P.3d 420 (2003)(stating that "laws must provide explicit standards for those charged with enforcing them..."); *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966) (stating that "a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves ... judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case").

[198] *Estate of Pousner*, 193 Ariz. 574, 579, 975 P. 2d 704, 709 (1999). *See also Denise R. v. Ariz. Dep't of Economic Security*, 2009 WL 1451452 (Ariz. App. 2009).

[199] *City of Tucson v. Citizens Utils. Water Co*, 17 Ariz. App. 477, 481, 498 P.2d 551, 555 (1972).

[200] *Tucson Elec. Power v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 245, 645 P.3d 231, 237 (1982).

[201] Tr. at 649 (emphasis added).

[202] *See id.* at 783 – 784.

on the APT invoices. If the invoice mentioned BVWC, it was approved. If not, it was disallowed. As such, Staff and RUCO failed to sustain their burden of providing substantial evidence to support their disallowances. Their analyses place form over substance—the wording on an invoice doesn't change the nature of the APT service provided or the benefit received from those services. An invoice is a bill for services; it is not an offer of proof regarding benefits from the APT costs. Boiled down, arbitrary assumptions don't have any place in the ratemaking process.

Staff and RUCO also fail to rebut the evidence that the APT costs are necessary for BVWC to provide utility services ***under the Liberty Water business model.*** If the Commission expects Liberty Water to continue using its shared services model, then Staff and RUCO must evaluate the corporate allocations ***within APUC's business model.*** Staff, however, compares the APT cost allocations to what BVWC would have incurred as a stand-alone utility. That stand-alone standard has not been formally approved by the Commission, nor has it been applied to any other utility, which means Staff invented that standard as justification for disallowing the APT costs in the Liberty Water rate cases.[203]

Under established ratemaking principles, "[p]ublic utilities must be given the opportunity to prove the necessity and reasonableness of any expenditure challenged by a commission (or intervenor). To justify expenditure, a company must show that the expense was ***actually incurred (or will be incurred in the near future), that the expense was necessary in the proper conduct of its business or was of direct benefit to the utility's ratepayers, and that the amount of the expenditure was reasonable.***"[204] BVWC has satisfied all of those conditions relating to the APT cost allocations.

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[203] *Id.* at 817 – 818, 820 – 821.

[204] The Regulation of Public Utilities, C. Phillips (1993) at p. 258 (emphasis added).

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5. <u>The Evolution of the Cost Allocations for APT.</u>

This docket is the fourth recent rate case involving a substantial dispute over the APT cost allocations. It is helpful to review certain testimony from Staff and RUCO over the course of those cases (Black Mountain Sewer, LPSCO, Rio Rico and Bella Vista).

a. <u>Black Mountain Sewer's Rate Case.</u>

In the initial case for Black Mountain Sewer filed in 2005, Staff objected to the inclusion of profit in the cost allocations from APT.[205] Unfortunately, Liberty Water's attempt to include profit in the initial cost allocations has made a lasting negative first impression on Staff and RUCO. On that issue, Staff testified that Liberty Water started "in a different place" than other utilities because of those circumstances.[206] RUCO's witness testified that RUCO "could, you know, accept some of these costs. But it started out so bad..."[207]

The fact that Liberty Water stumbled out of the gate on the APT costs does not give Staff and RUCO license to presumptively deny 99% of the costs. Further, the evidentiary record presented in this case shows Liberty Water's response. In response to concerns raised by Staff and RUCO in that initial case for Black Mountain, Liberty Water removed any and all profit from the APT cost allocations and presented the current allocation methodology and cost pool at issue in the LPSCO, Rio Rico and BVWC rate cases.[208] Liberty Water has come a long way since that very first case.

On August 31, 2010, the Commission issued Decision No. 71865 in the Black Mountain rate case.[209] In that decision, the Commission allowed recovery of the APT cost allocations related to audit expenses, tax service expenses, general legal expenses and

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[205] Eichler Rb. at 18. *See also* Docket No. SW-02361A-05-0657.

[206] Tr. at 861 – 862.

[207] *Id.* at 710 – 711.

[208] *Id.* at 862; Eichler Rb. at 18.

[209] *See* Decision No. 71865 (September 1, 2010), Docket No. SW-02361A-08-0609, at 20 – 25.

depreciation expense.[210] The Commission approved an allocation of 23.94% of those APT costs to the regulated utilities owned by Liberty Water, and approved an allocation of those APT costs to Black Mountain based on customer count.[211]

The Commission expressly stated that "[t]he expenses allowed for BMSC in this case, and the methodology employed for determination of appropriate central office allocations, is not necessarily applicable to other water and wastewater companies that are operated under a shared services structure."[212] In that decision, the Commission rejected Staff's attempt to apply a "stand alone" standard for determining corporate cost allocations.[213] Instead, "common expenses that are incurred and allocated to regulated utility companies must provide a clearly defined benefit to customers to be considered reasonably necessary for the provision of service."[214] The Commission concluded that "[f]or the Algonquin companies, certain efficiencies are inherent in its operation of multiple systems and we anticipate that BMSC and the other Arizona affiliates will continue to provide quality service at the lowest possible cost."[215]

If the Commission expects Liberty Water to continue use of its shared service model to reduce operating costs for the Arizona utilities, it is imperative that the Commission approve a proper and fair allocation of the APT costs. Staff's and RUCO's recommendation to deny 99% of the APT cost allocations to BVWC is not a fair allocation of the APT costs. Likewise, a decision to limit the APT cost allocations to a small portion of audit, tax, legal and depreciation expenses is not a fair allocation.

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[210] *Id.* at 24 – 25.

[211] *Id.*

[212] *Id.* Put simply, the Black Mountain Decision is not binding or controlling in this case.

[213] *Id.* ("While the standard to be applied in consideration of common expenses may not necessarily be what the utility would have required as a stand-alone company, the allocated costs must bear some semblance of reasonableness considering the company's size and service area.").

[214] *Id.* at 23.

[215] *Id.* at 26.

b. The LPSCO and Rio Rico Rate Cases.

In the LPSCO and Rio Rico cases, Staff's and RUCO's primary objections to the APT cost pool revolved around claims that the APT cost pool contained improper charges that should be directly allocated to APUC and its unregulated affiliates. These affiliates responded by removing any and all improper or questionable charges from the cost pool.[216] The end result is that the APT cost pool includes only those APT costs that are indirect, common costs under the NARUC Guidelines.[217] Staff's or RUCO's lack of trust simply isn't justification for presumptively denying the APT costs. The Commission also should recognize Liberty Water's efforts to rebuild that trust. Liberty Water, for example, proposed an independent attestation (under the NARUC Guidelines) to verify the contents of the cost pool and alleviate Staff's and RUCO's concern about improper charges.[218]

In its closing brief in Rio Rico, Staff formally "acknowledged that it is not opposed to the concept of a shared services model, [but] Staff still has some concerns given some of the inappropriate costs it found during its audit of the cost pool."[219] In this case, Staff's witness testified that "[w]e are not opposed to appropriate costs being allocated."[220] Here, the APT cost pool for BVWC doesn't include any charges that should be directly allocated to a specific unregulated facility.[221] Staff not only ignores this evidence, but inexplicably rejected an independent "attestation" of the final APT cost pool to minimize or do away with any such concerns.[222]

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[216] Eichler Rb. at 18 – 20.
[217] *Id.*
[218] *Id.* at 21 – 22.
[219] Staff Closing Brief, filed April 19, 2010 in Docket No. WS-02676A-09-0257, at 9.
[220] Tr. at 780 – 781.
[221] Eichler Rb. at 19.
[222] *Id.* at 21 – 22; Ex. R-20 at 4 ¶ E(3); Tr. at 768 – 774.

c. In the prior cases, Staff and RUCO expressly acknowledged that the APT costs benefit ratepayers.

In the LPSCO and Rio Rico cases, the ***actual testimony*** provided by Staff and RUCO is telling on several points relating to the APT costs. To start, in the LPSCO rate case, RUCO's Matt Rowell and Staff's Jeff Michlik both acknowledged that LPSCO benefits from access to capital markets on the TSX.[223] In the Rio Rico rate case, RUCO witness Tim Coley testified that the APT services provided Rio Rico with access to capital funding and that Rio Rico's customers benefited through plant and facilities financed by capital from the TSX.[224] Mr. Coley testified that Rio Rico's ratepayers benefited from access to capital provided by APT.[225] Staff witness Gerald Becker acknowledged that Rio Rico used and benefited from the capital financing provided by APUC/APT.[226]

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[223] Testimony of M. Rowell, January 11, 2010 Transcript in Docket No. W-01428A-09-0103 (consolidated), at 940. ("Q. Now, you said earlier in the testimony today that LPSCO benefits from capital funding through the sale of units of the income fund on the Toronto Stock Exchange, correct? A. That's correct."); Testimony of J. Michlik, January 14, 2010 Transcript in Docket No. W-01428A-09-0103 (consolidated), at 1197 ("Q. Well, irrespective of the ultimate ratemaking treatment of the cost of capital, you would agree that it benefits the utility to actually have access to capital for equity, agreed? A. Without regards to the specific amount, I would say yes, it is probably good for companies to have access to equity.").

[224] Testimony of T. Coley, March 12, 2010 Transcript in Docket No. WS-02076A-09-0257, at 423. ("Q. Okay. You also understand that the APT services provided Rio Rico with access to capital from the stock market in Toronto; agreed? A. I assume that Algonquin would provide some funding to Rio Rico if needed. Q. And, in fact, the company installed approximately $4 million worth of upgrades to its water system, including new wells, distribution lines, and things of that nature; correct? A. I think I heard four, four and a half million, yes.").

[225] *Id.* at 426 – 427 ("Q. Okay. And if, in fact, Rio Rico used that equity funding to install that plant, that plant is being used to provide water and utility service to the customers; correct? A. That's correct. Q. And if that plant is being used to provide water and utility service to the customers, that plant benefits the customers; agreed? A. Yes, one would hope so. Q. And if that benefit to the customers was based on the financing provided by the parent company through the Toronto Stock Exchange, then that financing provided by the parent company benefits the customer; agreed? A. Yes, but there are other means of finance.").

[226] Testimony of G. Becker, March 12, 2010 Transcript in Docket No. WS-02076A-09-0257, at 541 ("Q. The company has put in four and a half million dollars of water plant as part of the plant in rate base in this case; correct? A. Subject to check, yes. I vaguely recall that number. Q. And it's your understanding that the capital that was used to pay for that plant was provided by the parent; agreed? A. Yes.").

In LPSCO, Mr. Rowell testified that such capital funding from the TSX would not have been available to LPSCO without the trustee fees incurred by APT.[227] Mr. Rowell also acknowledged that the license fees incurred by APT are necessary for APUC to sell shares on the TSX.[228] In Rio Rico, Mr. Coley admitted that APUC could not trade shares on the TSX without communicating with shareholders and incurring the APT audit costs.[229] In Rio Rico, Mr. Becker testified that the APT services are legally required for APUC as a publicly traded company.[230]

In LPSCO, Mr. Rowell testified that LPSCO should recover for audit services provided by APT.[231] Mr. Rowell testified that "if APT is providing these tax services to

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[227] Testimony of M. Rowell, January 11, 2010 Transcript in Docket No. W-01428A-09-0103 (consolidated), at 946 ("Q. APT couldn't provide capital funding through sales of shares in the income fund to LPSCO without a board of trustees, could it? A. Well, again, it is APIF that actually raises the cash on the stock exchange. And they certainly could not do that, you know, through an exchange, you know, without a board of directors or trustees in this case.").

[228] *Id.* at 925 – 926 ("Q. Well, can an income fund sell shares on the Toronto Stock Exchange if it doesn't pay the licenses and fees necessary to participate in the Toronto Stock Exchange? A. Well, no. As I testified, there are expenses associated with being listed on a stock exchange.").

[229] Testimony of T. Coley, March 12, 2010 Transcript in Docket No. WS-02076A-09-0257, at 410 ("Can APUC trade on the Toronto Stock Exchange without communicating with its shareholders? A. Probably not very well. Q. Can APUC trade on the Toronto Stock Exchange without incurring audits or audited financial statements? A. I doubt if their SEC equivalent will allow that. Q. Can the parent company trade on the Toronto Stock Exchange without legal filings with the Canadian equivalent with the SEC? A. No, but I think I've answered that.").

[230] Testimony of G. Becker, March 12, 2010 Transcript in Docket No. WS-02076A-09-0257, at 546 – 548.

[231] Testimony of M. Rowell, January 11, 2010 Transcript in Docket No. W-01428A-09-0103 (consolidated), at 920 (emphasis added). *See also* Testimony of T. Coley, March 12, 2010 Transcript in Docket No. WS-02076A-09-0257, at 439 – 440 ("Q. Okay. And it's also your understanding that those audit service are required in order to obtain financing from the Toronto Stock Exchange; fair? A. That's the testimony I have heard. Q. Okay. And that is generally true for all publicly traded companies; they have to provide audited financial statements to investors, the SEC, regulatory agencies, and other entities like that; agreed? A. Agreed. There is a lot of government intervention usually."); *Id.* at 440 ("Q. And, in fact, it's a legal requirement that publicly traded companies, you know, have audited financial statements and have quarterly and annual audits of their business operations; agreed? A. Yes, agreed, as to the SEC, Security Exchange Commission, on the America level side with the people that are creating those regulations. Q. And it's your understanding that Canada has a similar agency; fair? A. That is my understanding. Q. You can't directly charge an audit taken on the parent level to a particular utility or facility, can you? A. It may be difficult, but that is why RUCO allows a certain amount of that particular line item called "all services" to be allocated to Rio Rico.").

LPSCO, then certainly they should be allowed."[232] Mr. Rowell agreed that LPSCO's use of an ERP system administered by APT as part of the Liberty Water shared services model is beneficial to ratepayers and "should be allocated to LPSCO."[233] Finally, Mr. Rowell testified that rent for the central office should be allowed because "it did appear as if there was some actual work done at the APT location specifically for LPSCO."[234] This testimony demonstrates that Staff and RUCO simply can't justify a 99% disallowance.

6. __Liberty Water's Cost Allocation Methodology Is Virtually Identical to the Cost Allocation Models Approved by Staff and the Commission for Global Water and Arizona-American.__

At trial, Staff's witness acknowledged that the "Commission should apply the same set of standards and principles for similarly situated utilities."[235] It's ***undisputed*** that the Commission has approved affiliate cost or shared service allocations for Arizona-American and Global Water, while at the same time rejecting Liberty Water's—even though all three companies use virtually identical allocation methods.[236] For Global Water and Az-Am, Staff did not attribute 90% of the corporate costs to the parent companies like Staff did for Liberty Water.[237] Nor did Staff apply a stand-alone allocation standard to either Global Water or Az-Am.[238] Rather, Staff recommended approval of the

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[232] Testimony of M. Rowell, January 11, 2010 Transcript in Docket No. W-01428A-09-0103 (consolidated), at 917.

[233] *Id.* at 929 ("Q. And you are aware that LPSCO uses the ERP system that's provided by APT for purposes of utility operations, correct? A. That's correct. I believe the costs associated with the ERP system were included under other professional services, which I believe should be allocated to LPSCO."). An Enterprise Resource Planning (ERP) system is an integrated computer-based system used to manage internal and external resources, including tangible assets, financial resources, materials, and human resources. An ERP uses a centralized database and common computing platform to consolidate all business operations into a uniform and enterprise-wide system environment.

[234] *Id.* at 939 – 940.

[235] Tr. at 767 – 768.

[236] *Id.* at 667 – 670, 780 – 781.

[237] *Id.* at 798 – 799.

[238] *Id.* at 820 – 821.

Global Water and AZ-Am corporate cost allocations without any significant deductions.[239]

At trial, Staff counsel recommended that Liberty Water adopt a cost allocation methodology similar to Arizona-American Water Company because approval of corporate cost allocations for American Water "never seems to be a problem with Arizona-American rate cases on cost allocation, but it appears to be a problem with the Liberty Water Companies."[240] On that issue, the record in this case is ***undisputed*** that American Water and Liberty Water have similar corporate structures and cost allocation models.[241]

In response to Staff's suggestion, Mr. Eichler contacted representatives of Az-Am and reviewed cost allocations filings of American Water in other jurisdictions.[242] Exhibit A-21 is Mr. Eichler's comparison of the American Water and Liberty Water cost allocation models. That document establishes the similarities between those models. To start, Az-Am is owned by American Waterworks, Inc. ("American Water"), which is publicly traded on the New York Stock Exchange.[243] Just like APT, American Water Works Service Company is a subsidiary of American Water that "provides centrally administered professional services to [American Water's] Regulated Businesses…"[244] The centrally administered services provided by American Water Works Service Company include "accounting, administration, business development, communications, corporate, secretarial, engineering, financial, health and safety, human resources, information systems, legal, operations, procurement, rates, security, risk management, water quality and research and development."[245] Those costs are allocated to American Water's regulated utilities, including Az-Am: "[t]he Regulated and Non-Regulated

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[239] *Id.* at 797 – 798, 822 – 825; Ex. A-30.
[240] Tr. at 109 – 110.
[241] *Id.* at 403 – 405; Ex. A-21, A-26, A-30.
[242] Tr. at 403.
[243] *Id.* at 404 – 405; Ex. A-26 at 20 – 21.
[244] Ex. A-26 at 20 – 21.
[245] Ex. A-26 at 21.

Businesses segment information includes intercompany costs that are allocated by American Water Works Service Company…"[246] American Water allocates the same centrally administered corporate costs to Az-Am that APT allocates to BVWC.[247]

The record also shows that Staff (Mr. Becker) recommended $1,657,590 in corporate cost allocations for Az-Am's Anthem/Aqua Fria wastewater district in the company's 2005 rate case, including many items deducted from the APT cost pool here.[248] Staff's recommendation included $70,313 in Director/Officer salaries, $134,836 in employee pensions and benefits, $741,712 in Management Fees, $91,310 in Customer Accounting charges, $54,180 in Corporate Rent, $144,275 in General Office Expenses, $83,055 in insurance, and $221,900 in Miscellaneous Expenses.[249] ***By comparison, the total APT cost allocation for Bella Vista is $125,830.*** In Az-Am's 2005 rate case, Commission Staff recommended approval of a yearly allocation of $741,712 in corporate management fees or $61,809.33 per month.[250] Yet Staff disallows an allocation of $19,884.81 in management fees to BVWC or $1,657.07 per month.[251]

Mr. Eichler also established that Global Water's cost allocation method is very similar to Liberty Water's.[252] Specifically, Exhibit PE-RJ4 is a comparison of Liberty Water's Central Office costs to similar costs allocated by Global Water. That comparison

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[246] Ex. A-26 at 135.

[247] Tr. at 404 – 408.

[248] Ex. A-30.

[249] *Id.* Under the 1996 NARUC Uniform System of Accounts for Class A Water Utilities, the "Miscellaneous Expense" account shall include charges for "communications service not chargeable to other accounts," "trustee, registrar and transfer agent fees and expenses," "stockholder meeting expenses," "dividend and other financial notices," "printing and mailing dividend checks," "Director's fees and expenses," and "publishing and distributing annual reports to stockholders," among other items. Ex. A-28. One can certainly surmise that Az-Am's corporate cost allocations for Miscellaneous Expenses includes a variety of charges relating to American Water's status as a publicly traded company.

[250] Ex. A-30; Schedule GWB-11, Operating Income Adjustment #1, Corporate Expense Allocation, Docket No. WS-01303A-06-0403; Tr. at 823 – 825.

[251] Tr. at 341.

[252] *Id.* at 398 – 400; Eichler Rj. at Exhibit PE-RJ4.

shows that Liberty Water allocates 24.29% of the APT management fees compared to 16% for Global Water. Further, Liberty Water allocates 24.29% of APT's legal fees, rent, depreciation, office expenses and other professional services compared to Global's allocations of 52% for legal fees, rent and depreciation and 62% for office expenses and other professional services.[253] Mr. Eichler affirmatively established that Global Water and Liberty Water have similar corporate structures and use mirror-image cost allocation methods.[254] ***Staff and RUCO did not dispute or contest that testimony.*** In fact, in the Black Mountain rate case, Ms. Brown testified that she reviewed and approved Global Water's cost allocation methodology.[255]

Global Water and Liberty even have similar growth strategies—a factor which Staff utilized in rejecting the APT costs. According to Ms. Brown, "[APIF] is focused on *growth in cash flow and earnings* as evidenced from its business strategy. Since shareholders seek a profit and APIF incurs expenses (e.g. central office costs) in order to generate that profit, then a reasonable conclusion is that the central office costs are incurred primarily for the benefit of the shareholders rather than for the Algonquin Companies..."[256] Staff also concluded that the APT costs would have been incurred even if APUC did not own the Algonquin Companies "because the central office costs were incurred to make a profit for the shareholders and not to operate the Algonquin Companies. The benefit to the Algonquin Companies is only secondary or incidental."[257]

This testimony is flawed on several levels. To start, the APT costs are allocated to the utilities at cost, which means that neither APUC nor its investors generate any profit or revenue from the APT costs. Further, APT's one and only business is to serve the

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[253] *Id.*

[254] Tr. at 399 – 401.

[255] November 25, 2009 Transcript in Docket No. SW-02361A-08-0609, at 781.

[256] *Id.*

[257] *Id.*

unregulated facilities and regulated utilities owned by APUC.[258] **The APT costs primarily benefit the regulated utilities owned by APUC because those utilities would not have access to capital markets without incurring those costs.**[259] The growth strategy of APUC is irrelevant because the APT cost pool for BVWC does ***not*** include any costs related to future business growth or acquisitions.[260] Also, whether or not APUC intends to grow its business and make a profit has no bearing on whether BVWC and its ratepayers actually used and benefited from the APT costs (i.e., received capital from the TSX) and whether the level of costs was reasonable.

Last, Staff used that growth standard to deny 90% of the APT costs, but Staff did not apply that standard to Global Water. This is plainly arbitrary. Staff's witness conceded that Global Water has a similar growth oriented strategy as Liberty Water, yet Staff approved the bulk of Global's allocations.[261] Because the Commission and Staff have approved Global Water's cost allocations, the Commission should approve the APT costs allocations here, especially since BVWC's operating costs per customer are lower than comparable operating costs of Global Water.[262]

7. The Commission Should Ignore Staff's and RUCO's Red Herrings and Reject Their Disallowances of the APT Costs.

Staff and RUCO disallow virtually the entire APT cost pool based on their belief that the services provided by and costs incurred by APT do not primarily benefit BVWC

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[258] Eichler Rb. at 9.

[259] *Id.* at 10 – 15; Tr. at 395 – 396, 642 – 643.

[260] Tr. at 799; Eichler Rb. at 18 – 19.

[261] Tr. at 807 – 811. In 2008, Global Water filed an S-1 Registration Statement with the Securities Exchange Commission seeking to become publicly traded. As stated in that Registration Statement, Global Water's "objective is to become the largest investor-owned operator of integrated water utilities in the arid Western U.S…" Ex. A-29 at 8. Global's growth strategy includes utility acquisitions, growing its existing service areas and expanding its unregulated business. *Id.* at 10.

[262] Eichler Rj. at Exhibit PE-RJ3 (Bella Vista's operating cost per customer (9,610 customers) is $409.17 compared to an operating cost per customer of $468.17 for Global Water – Santa Cruz Water Company (15,371 customers)).

or its ratepayers.[263] On the cost allocation issues, Staff's and RUCO's witnesses were unconvincing. In her testimony, Staff's witness raised a host of red herrings that simply do not bear on the cost allocation issues. To start, Staff's witness argued that the APT costs do not benefit BVWC and its ratepayers because the APT costs would have been incurred whether or not APUC owned the Bella Vista companies.[264]

That argument is nonsense for several reasons. Whether or not the APT costs already would have been incurred does not bear on whether BVWC benefited from those costs. If BVWC used capital provided from the TSX, then BVWC must accept a fair share of the APT costs. Otherwise, the other regulated and unregulated facilities owned by APUC would be subsidizing BVWC's access to the TSX, which Staff acknowledges is improper.[265] Staff and RUCO both fail their burden of proof on this issue.[266]

Further, whether or not the APT costs already would have been incurred or paid by other entities does not change the fact that BVWC benefits from those costs by receiving capital from the TSX. A simple example illustrates that point.[267] Let's assume that APUC owns two regulated facilities in Arizona. As part of its shared services model, APT invests in a scalable accounting and billing software package that costs $20,000 per year. Both regulated utilities have 5,000 customers and use the accounting system, so they are each allocated $10,000 per year in accounting system costs. Now, let's say that APUC subsequently acquires one unregulated electric facility that also utilizes the

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[263] Brown Dt. at 33; Brown Sb. at 20 – 22; Coley Dt. at 28 – 29.

[264] Tr. at 788; Brown Sb. at 23.

[265] Tr. at 790 – 791.

[266] At trial, Staff's witness went so far as to analogize her disallowance to a home mortgage from Chase Bank. *Id.* at 844 – 845. According to Ms. Brown, "Chase Bank does not allocate any of its expenses to me even though they may own my house." *Id.* at 844. Anyone who has ever received a loan from a bank is aware that banks charge origination fees, closing costs, discount points, appraisal fees and other charges. All of those charges reimburse the bank for its costs to provide the loan financing, close the transaction and process the loan. Banks absolutely allocate their costs to customers.

[267] Eichler Rj. at 3 – 4.

customer accounting system. The software package is scalable and does not require any upgrades, so the $20,000 cost remains constant. Under Staff's logic, that unregulated facility would not share in the yearly costs for the software because the costs already would have been incurred by the two regulated facilities. Obviously, that's illogical because all three entities benefit from the software costs by using the software package.[268]

What's more, Staff did not properly apply the NARUC Guidelines to the APT cost allocations. Staff attempted to use the NARUC Guidelines to substantiate concerns about subsidization by BVWC's ratepayers for unregulated business operations of APUC.[269] That issue is a red herring because there is no evidence of subsidization by Bella Vista's ratepayers—approximately 76% of the entire APT cost pool is allocated to unregulated electric facilities.[270] Under that methodology, the other 46 facilities owned by APUC would subsidize the APT services provided to the seven Arizona utilities. Staff expressly acknowledged that such reverse subsidization is improper and unfair.[271] Staff's proposed 90% allocation to APUC violates the very NARUC Guidelines cited by Staff. On this record, Staff's (and RUCO's) recommended disallowances should be denied because they are unsupported and unjustified.

D. <u>Issue in Dispute (Rate Base) – Inadequately Supported Plant</u>

Staff made an adjustment to rate base to remove what it labeled "inadequately supported plant".[272] As discussed above in Section I, the Company promptly provided a revised calculation using the NARUC methodology preferred by Staff, and the AFUDC portion of this adjustment was reversed in Staff's surrebuttal.[273] RUCO concurs with the

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[268] *Id.* at 4.
[269] Brown Dt. at 32.
[270] Tr. at 388 – 389; Eichler Rb. at 23 – 24.
[271] Tr. at 693 – 694.
[272] Brown Dt. at 14 – 15.
[273] Brown Sb. at 9:8-15.

revised AFUDC computation.[274] Staff, however, asserts that the Company still failed to adequately support more than $100,000 of plant.[275] According to Staff's witness, "if inadequately supported plant is not removed from rate base, ratepayers are at risk for paying non-existent or overstated costs."[276] The Company agrees. The Company also agrees that it bears the responsibility of supporting its claimed costs, which it has overwhelmingly done throughout this rate case. But it is Staff's responsibility to support its adjustment and Staff has not done so here.

Staff admits that the Company's books and records support the plant costs at issue.[277] This is evidence of the plant and its cost. Staff further agreed that the Company provided supporting invoices for over $3.3 million of the roughly $3.5 million of plant Staff inquired about.[278] It is hard to imagine ratepayers are at any appreciable risk of paying for "overstated or non-existence" plant when 95 percent of Staff's requests for <u>additional</u> support were met. As Staff's witness acknowledged, invoices do not provide evidence of how plant was financed or whether it is still in service; they simply confirm what was already known from the Company's books and records – the actual cost.[279] Staff engineering did not find any plant claimed by the Company to be non-existent.[280] And RUCO does not recommend a similar adjustment, which further undermines the concern that ratepayers are being harmed. In other words, this adjustment should be rejected because Staff has not provided substantial evidence that the plant was "inadequately supported."

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[274] Moore Sb. at 8:10 – 9:4.

[275] At trial, Staff's witness was not sure how much plant she was still removing from rate base for lack of support. Tr. at 875:17 – 879:19. In Staff's final schedules the amount is $104,983. Staff Final Schedule CSB-6 (BVWC).

[276] Brown Sb. at 10:1-15.

[277] Tr. at 881:16-21.

[278] *Id.* at 881:23 – 882:2.

[279] *Id.* at 882:3-11.

[280] *Id.* at 880:10 – 881:4.

E. <u>Issue in Dispute (Rate Base) – Customer "Security" Deposits.</u>

Staff deducted the amount of test year "customer deposits," approximately $205,000, from rate base.[281] According to Staff, "customer deposits are a deduction in the calculation of rate base."[282] In this case, the deposits at issue are "security" deposits, and when asked for authority for her position, Staff's witness could not identify a single rule or a single Commission order where customer security deposits were approved as a reduction to rate base.[283] All Staff could offer was what its witness "believed" had been done in some unidentified Class D and E utilities without "disallowance."[284] Ms. Brown's admitted speculation is hardly sufficient basis to lower the Company's rate base by $200,000, an adjustment RUCO does not support.

Staff did offer an unlabeled training manual page that says "customer deposits" are deducted from rate base as customer supplied capital.[285] It's isn't clear whether Staff distinguishes security deposits from other types of deposits that customers, developers and others may pay the utility.[286] This bare-bones document provides no explanation, but it appears to speak to things like meter deposits which are held for several years, or deposits paid by developers for extensions of service not taking place immediately. Security deposits are a different matter. As Staff agreed, security deposits are short-term deposits held by the utility to secure payment for utility services rendered.[287] Staff further agreed that security deposits do not provide the utility a source of capital to use instead of its own.[288] Instead, security deposits are required for only certain customers, held for

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[281] Brown Dt. at 23:9-13.
[282] *Id.* at 22:19-20.
[283] Tr. at 956:14 – 957:11.
[284] *Id.* at 956:19-23, 1024:2 – 1025:5.
[285] Ex. S-25.
[286] Tr. at 1022:7 – 1023:19.
[287] *Id.* at 957:14-21.
[288] *Id.* at 957:22-25.

differing lengths of time, but typically refundable within one year.[289]

In the end, this appears to just be another way to lower the utility's rate base because it holds money for others without any benefit to itself. From the utility's perspective, that makes Staff's adjustment for security deposits eerily similar to Staff and RUCO's admitted use of the HUF in the same manner (*see* Section II(J)(3), *infra*). Ironically, though, the training manual actually has it correct – the Commission should deduct zero-cost capital from rate base when the utility has beneficial use of the capital in lieu of its own. But that is not the case with short-term security deposits and, therefore, Staff's adjustment should be rejected.

F. <u>Issues in Dispute (Rate Base) – Amortization of CIAC.</u>

In surrebuttal, Staff set out to defend its CIAC amortization methodology.[290] But the Company's witness agreed with Staff that CIAC should be amortized using a composite depreciation rate.[291] These witnesses also agreed that the premise of using a composite rate to amortize CIAC is that all of the plant being amortized was in fact funded by CIAC.[292] The result is revenue neutral because the amount of depreciation expense will be offset by an exact amount of amortized CIAC.[293] For these reasons, Mr. Bourassa included land booked as CIAC in the calculation.[294] Again, this was revenue neutral and ensured correct matching of plant with CIAC. Staff, on the other hand, removed the land from the CIAC account. This adjustment, which was not supported by RUCO, creates a mismatch and should be rejected.[295]

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[289] *Id.* at 958:1-10.

[290] *See generally,* Brown Sb. at 15 – 17. Staff did not raise this issue in its direct, nor is it clear from the testimony why it was raised in surrebuttal.

[291] *Compare* Brown Sb. at 16:1-5 *with* Bourassa Rj. at 13:6-9.

[292] Tr. at 953:19-22; Bourassa Rj. at 13:20 – 14:2.

[293] Tr. at 953:23-25; Bourassa Rj. 13:25 – 14:2.

[294] Bourassa Rj. at 13:9-15.

[295] *Id.* at 15:1-5 (Staff's recalculation of past CIAC amortizations benefits the Company, but the mismatch is wrong and should be rejected).

G. Issues in Dispute (Rate Base/Depreciation Expenses) – Accumulated Depreciation and Depreciation Methodology.

The Company uses the group method of depreciation, just like Global Water, and Arizona Water and all of the Liberty Water utilities.[296] In this case, as near as the Company can tell, Staff recommends changing the methodology and recalculating accumulated depreciation, resulting in increased rate base, and depreciation expense, resulting in less of this annual expense.[297] Staff's "primary" and "main" concern was that "retirements are not removed from accumulated depreciation as required by the NARUC-USOA."[298] Fair enough. But lost in Staff's tortuous defense of its exaggerated remedies are two critical facts. First, the Company immediately responded to the concern over retirements with its own proposed adjustment, which was adopted by both Staff and RUCO.[299] Second, the Company recently adopted a retirement policy that responded to and addressed the legitimate concerns that were raised.[300]

Staff couldn't comment on whether the Company's retirement policy addresses its concerns because Staff's witness didn't read it.[301] But the policy does address the need to ensure that plant that is permanently taken out of service is removed from the Company's books and records.[302] That's more than any of Staff's recommendations can offer because the risk of plant being over-depreciated exists no matter what depreciation methodology is being used.[303] What is known though is that Staff's approach will require the Company to adopt a wholly new depreciation methodology that is more complicated to administer.[304]

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296 Tr. at 1040:18 – 1041:11; Bourassa Rj. at 10:9-14.
297 Bourassa Rj. at 7:18 – 8:8, 22:9 – 20.
298 Brown Dt. at 20:1-4.
299 Brown Sb. at 8:12-23; Moore Sb. at 7:6 – 8:8.
300 Ex. A-31.
301 Tr. at 873:16-18, 874:10-15.
302 Ex. A-31; Tr. at 1042:8-16.
303 Tr. at 1041:12-22.
304 Bourassa Rj. at 9:18-22.

This certainly isn't required by "the NARUC" as Staff's witness repeatedly implored.

All NARUC requires is the use of straight line depreciation and the removal of retired plant.[305] The Company now has a policy to retire plant. The Company also uses straight line depreciation.[306] Therefore, the Company isn't really sure how it is sinning against NARUC. Perhaps, candidly, Staff simply does not understand the group depreciation method well enough to understand that it treats all plant as being in a group, and not individually, for all purposes, including retirements.[307] Presumably the Commission understands this as it keeps approving use of the group method for most of the similarly situated utilities. It should reject Staff's position, again unsupported by RUCO, and again approve the Company's continued use of the group method. The Commission also can make it clear in its order that adopting a policy is a good step but it is meaningless if it is not followed. Anything further is simply overkill.

H. <u>Issue in Dispute (Expense) - Rate Case Expense.</u>

The Company's final schedules reflect its request for $375,000 of rate case expense amortized over three years.[308] This reflects the Company's $75,000 downward adjustment from the $450,000 of rate case expense the Company initially estimated. This rate case expense is for three separate rate applications filed by the three separate Applicants, each with supporting testimony and the requisite schedules. This also includes a fourth filing, also with testimony and schedules, filed by the Applicants in support of the requested consolidation, which both Staff and RUCO agree is in the public interest. Despite consolidation of the four dockets into one, this proceeding still has involved the setting of rates for nearly 10,000 customers, with substantial amounts of discovery, 6 days of hearings, final schedules for 4 different entities and final briefing, all before the ROO is

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[305] Tr. at 732:5-11, 736:25 – 737:8, 743:11-2, 889:22 – 890:2, 8-9, 1026:2-4.

[306] *Id.* at 1035:19 – 1037:6.

[307] *Id.*; *Id.* at 1037:7 – 1038:11, 1039:4 – 1040:17.

[308] Applicants Final Schedule C-2, page 7. *See also* Tr. at 420:13-22.

issued. The Company will incur more than $375,000 in total rate case expense, however, the Company's shareholders will be sharing in this expense by paying all amounts above the amount authorized for recovery, in addition to the embedded carrying costs.[309] Unfortunately, that's still not good enough for Staff and RUCO.

But Staff and RUCO have failed to meaningfully consider the evidence of actual rate case expense.[310] It is unclear why Staff chose not to review evidence of actual rate case expense after February 2010, but RUCO didn't do it because the Company did not have information to update an estimate RUCO was given over a year ago *in another rate case*.[311] This is nonsense. There was ample evidence available for RUCO and Staff to come up with a reasonable level of rate case expense for this case. They just didn't do it.

Staff and RUCO must not be allowed to salvage their burden on this issue with reference to the recently decided Global Water rate case.[312] As Staff's witness admitted at trial, there was really only one material one issue in dispute in that rate case, and rate case expense was not in dispute.[313] Likewise, Staff's testimony that the Company used little if any internal resources should fail.[314] In fact, this testimony is simply wrong, as reflected in Staff's witness' utter inability to reconcile her claim with the facts, including the Company's use of only one outside witness, its internal handling of data requests, and the effort its representatives took to work with Staff and RUCO following the filing of their direct testimonies.[315] In fact, had the Company not undertaken this effort, which at the time increased rate case expense, the gap between Staff and the Company's positions would have led to a far more complicated rate case with more issues and another $1

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[309] Tr. at 299:1 – 301:11, 422:1-12.
[310] *E.g.*, Tr. at 290:13-25, 297:19-21, 963:6-16; Brown Dt. at 41:4-6.
[311] Tr. at 290:21 – 294:2.
[312] Brown Dt. at 41:16 – 42:21; Tr. at 1009:16 – 1011:20.
[313] Tr. at 1031:4-18.
[314] Brown Dt. at 41:8-14.
[315] *See* Tr. at 963:17 – 966:18.

million or so in dispute. In other words, the Company used its rate case expense prudently, and neither RUCO nor Staff has come close to meeting its burden of proof for an adjustment to the requested $375,000 of rate case expense.

I. Issue in Dispute - Cost of Capital.

1. Overview of the Company's Recommendations.

The Company is requesting a rate of return on its rate base based on a weighted average cost of capital ("WACC") of 9.85 percent.[316] The WACC is based on the Company's capital structure at the end of the test year, which consisted of 77.4 percent equity and 22.6 percent debt.[317] The Company's recommended debt cost is 6.28 percent based on the average debt costs for BVWC.[318] NSWC and SSWC do not have any debt.[319] The return on common equity requested by the Company is 10.9 percent, based on the updated analysis presented by Mr. Bourassa.[320]

In his analysis, Mr. Bourassa utilized the same market-based finance models – the Discounted Cash Flow Model ("DCF") and the Capital Asset Pricing Model ("CAPM") – that the Commission has relied on in numerous water and wastewater utility rate cases during the past decade. These models are implemented through the use of financial information for comparable firms with common stock that is traded on a national exchange. Because the Company's stock is not publicly traded, Mr. Bourassa used as his proxy the same six publicly traded water utilities that Staff has consistently used in prior water and wastewater utility rate cases, with appropriate adjustments to account for the Company's specific risk profile.[321]

[316] Applicants Final Schedules A-1 and D-1.
[317] Applicants Final Schedule at D-1.
[318] Bourassa COC Rb. at 3:2-3.
[319] NSWC Final Schedule D-1; SSWC Final Schedule D-1.
[320] Applicants Final Schedule D-4; Bourassa COC Rb. at 2:2 – 4:10.
[321] Bourassa Joint Dt. at 15 – 17 (describing sample utilities).

First, Mr. Bourassa adjusted the cost of equity produced by the DCF and CAPM downward by 60 basis points to account for the absence of debt in the Company's capital structure, using the method normally used by the Commission.[322] Second, he adjusted the cost of equity upward by 50 basis points to account for the Company's small size relative to the proxy companies; the Company's lack of investment liquidity (i.e., an equity investment in the Company cannot be sold quickly on a stock exchange); and the additional risk that results from the particular rate-making methods employed in Arizona.[323] The table below summarizes the Company's final position regarding the cost of equity:

Method	Low	High	Midpoint
DCF Estimates	9.1%	10.5%	9.8%
CAPM Estimates	10.4%	13.9%	12.2%
Average	9.8%	12.2%	11%
Risk Adjustment for the Company's Capital Structure	-0.6%	-0.6%	-0.6%
Risk Adjustment for Other Company-Specific Risks	0.5%	0.5%	0.5%
Indicated Cost of Equity	9.7%	12.1%	**10.9%**[324]

2. Overview of Staff and RUCO's COC Recommendations.

For the Company, RUCO recommends using BVWC's capital structure, which at 79 percent equity and 22 percent debt is similar to the Company's.[325] Staff's recommended capital structure for the Company consists of 81.3 percent common equity

[322] Bourassa COC Rj. at 2:5-7.
[323] *Id.* at 2:7-9.
[324] *Id.* at 2:10-23.
[325] Rigsby Sb. at 4:20-23.

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and 18.7 common debt.[326] These capital structures are close and not themselves in dispute. Nor is there a dispute over the Company's cost of debt as all parties use roughly the same debt costs from BVWC of 6.28 percent.[327] Staff and RUCO cost of capital witnesses also used the DCF and CAPM to develop their cost of equity recommendations. Significant differences exist, however, between the inputs used by Mr. Bourassa and the inputs used by the witnesses for Staff and RUCO. As a result, the estimates produced by their models differ from Mr. Bourassa's estimates:

Party	DCF	CAPM	Average
Company	9.8%	12.2%	11%
Staff	9.5%	11.1%	10.3%
RUCO	9.92%	5.95%	7.93[328]

Staff's witness also proposed a downward adjustment of 100 basis points to account for the Company's lack of debt using the Hamada method while ignoring all other firm-specific risks, which reduced Staff's recommended cost of equity to only 9.3 percent.[329] In contrast, RUCO's witness Mr. Rigsby proposed an upward adjustment of nearly 110 basis points to his estimated equity cost.[330] RUCO's upward adjustment makes sense, to properly account for the Company's investment risk relative to the publicly traded utilities and, to offset, at least partially, the ridiculously low results of Mr. Rigsby's CAPM analysis.[331]

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[326] Chaves Sb. at 7:17.

[327] *Id.* at 7:18; Rigsby Sb. at 5:1-3. Notably, RUCO does recommend hypothetical capital structures for NSWC and SSWC on a stand-alone basis. Rigsby Sb. at 3:18-23. The Company's opposition to this recommendation is set forth in Mr. Bourassa's and Mr. Sorensen's rebuttal and rejoinder testimonies. Bourassa COC Rj. at 7:11-22, 40 – 42; Sorensen Rb. at 11 – 12; Sorensen Rj. at 4:22 – 5:15. Fortunately, one of the benefits of consolidation is that the debate over these fictitious adjustments is moot.

[328] Chaves Sb. at 2:10-11, Schedule PMC-2; RUCO Final Schedule WAR-1.

[329] Chaves Sb. at 2:10-11, Schedule PMC-2.

[330] RUCO Final Schedule WAR-1, page 3 of 3. The average of RUCO's CAPM and DCF is 7.93. RUCO's recommends a 9 percent cost of equity.

[331] Mr. Bourassa similarly estimated a small company risk premium for the Company of 50 basis points. Bourassa Joint Dt. at 19:8-10; Bourassa COC Rb. at 5:1- 6:14.

In sum, the parties' respective recommended returns on equity are as follows:

Company	10.9%
Staff	9.3%
RUCO	9.0%

3. Analysis and Argument.

As noted, six of Liberty Water's seven Arizona utilities have been involved in four recent Commission rate proceedings. The BMSC rate case was decided in August of this year (Decision No. 71865), and a decision for LPSCO is expected anytime. The RRUI rate case is also pending, also before Judge Rodda, also involving only Staff and RUCO on the issue of cost of equity. In that case, RRUI laid out its case against Staff and RUCO's cost of equity methodology in substantial detail. While the numbers are case specific, for the most part, the DCF and CAPM analysis is the same in all cases.[332] As such, the Company does not feel it needs to repeat here why Staff is double counting historic growth rates in its DCF analysis or why RUCO's water sample group is flawed and its use of gas companies inappropriate. These arguments, along with Mr. Bourassa's continued concerns with Staff and RUCO's cost of capital analysis are well explained in the closing briefs filed by RRUI, and in Mr. Bourassa's prefiled testimony in this case.[333] Obviously, as in the RRUI case, the results of the arguments show that RUCO's recommended cost of equity is too low, and while Staff's is better, it still is not high enough, and the Company's is just right given the totality of the circumstances.

Actually, in this case, the Company's chief complaint is with Staff's overstated Hamada adjustment. The dispute is not about the use of a financial risk adjustment or the

[332] Tr. at 336:22 – 338:19 (Mr. Rigsby discussing his methodologies in all cases). Notice can also be taken that Staff's methodology does not change with the witness.

[333] *See* Rio Rico Utilities, Inc.'s Initial Closing Brief, filed April 19, 2010 in Docket No. WS-02676A-09-0257 ("Rio Rico Closing Brief"), at 38 – 70, and Rio Rico Utilities, Inc.'s Reply Closing Brief, filed May 10, 2010 in Docket No. WS-02676A-09-0257 ("Rio Rico Reply Brief"), at 23 – 42, incorporated herein by reference; Bourassa COC Rb. at 8 – 33; Bourassa COC Rj. at 9 – 45.

Hamada methodology in concept. Mr. Bourassa considers the need for a financial risk adjustment in his analysis and used the Hamada methodology in this case.[334] Mr. Bourassa also questioned Staff's Hamada analysis as applied for the same two reasons asserted in the RRUI rate case: (1) Staff's failure to adjust for the difference between the Company and the very large sample companies in the use of a beta; and (2) Staff's use of book value in a market based model, both of which increase the results of the adjustment.[335] These two issues are also addressed in RRUI's brief.[336] Of course, there is serious question as to whether any financial risk adjustment is necessary for the Company.

Initially, Staff came up with a recommended cost of equity of 10.2 percent using its DCF and CAPM models, which it then adjusted downward by 40 basis points using the Hamada methodology.[337] Then, Staff updated its capital structure for the Company by going outside the test year, causing Staff's Hamada adjustment to increase by 60 basis from 40 basis points to 100 basis points.[338] When applied to Staff's return on equity, this 100 basis point downward adjustment results in a return on equity of only 9.3 percent. But why does the Company need any financial risk adjustment? The Company has roughly 20 percent debt in its capital structure, which is sufficient to avoid the need for further adjustment.[339] In fact, Staff is only using a financial risk adjustment in this case because the Company's shareholder has access to capital.[340] The result-driven nature of Staff's financial risk adjustment is plain to see.

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[334] Bourassa COC Rb. at 8 – 11; Bourassa COC Rj. at 9 – 15.

[335] *Id.*

[336] Rio Rico Closing Brief at 52 – 55 and Rio Rico Reply Brief at 29 – 35, which are incorporated herein by this reference.

[337] Chaves Dt. at 34:5, 35:11-22.

[338] Chaves Sb. at 2:12.

[339] Testimony of W. Rigsby, January 11, 2010 Transcript in Docket No. W-01428A-09-0103 (consolidated), at 975 – 976.

[340] Tr. at 155. Even worse, Staff and RUCO not only use Liberty Water's access to capital as a means to reduce cost of capital, but Staff and RUCO then seek a denial of 99% of the APT costs incurred to obtain and maintain that access to capital markets. It is patently unfair to penalize Liberty Water twice on that issue.

Therefore, at a minimum, if Staff's cost of equity is used it should be used unadjusted. Better yet, the Commission should approve the Company's recommended cost of equity, along with its capital structure and WACC. Only the Company's witness considered all of the relevant circumstances and his recommended return on rate base is just and reasonable.

J. Issues in Dispute - Rate Design.

1. Brief Summary.

The Applicants' proposed rates and charges are set forth in the final H schedules. These schedules include a set of stand-alone rates for each of the Applicants, which rates would be applicable only if the requested consolidation was denied. The Applicants' preferred and final recommended rates and rate design are set forth in the schedules for the Company, including the rates by class as shown in Schedule H-3.[341] The Company's H-2 schedules also show the average bills at current and proposed rates.[342] Staff and RUCO likewise have filed schedules reflecting their rates for service on a stand-alone and on a consolidated basis.[343] Under all three parties' consolidated rates, there will be a single tariff for all customers, irrespective of which system they are on.[344] All three parties also use an inverted tier rate design with three (3) tiers for the small residential customers and two (2) tiers for the larger residential, commercial and irrigation customers.[345] The inverted tier rate design is based largely on conservation, rather than the cost of service.[346]

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[341] Applicants Final Schedule H-3.

[342] Applicants Final Schedule H-2, page 1.

[343] Staff Final Schedules CSB-1 RD, CSB-3 RD, CSB-5 RD, and CSB-7 DR; RUCO Final Schedules SURR RLM-RD1 (Applicants), SURR RLM-RD1 (BVWC), SURR RLM-RD1 (NSWC), and SURR RLM-RD1 (SSWC).

[344] Tr. at 288:23 – 289:4, 994:25 – 995:5.

[345] *E.g., Id.* at 288:11-22 (discussing substantial similarity of RUCO and Company's rate designs), 995:1-14.

[346] *Id.* at 1002:11-14, 1055:4-7.

Notwithstanding these significant areas of agreement on rate design, there remain two issues in dispute. First, the Company takes some issue with Staff's use of a tiered rate design to shift revenue recovery away from residential consumers. Second, the parties have done everything but come to blows over certain language in the Company's proposed HUF tariff. These two issues are discussed below.

2. Revenue Shifting.

The Company believes that Staff's rate design moves collection of revenue away from small residential customers, not solely to promote water conservation, but to artificially keep rates low for small residential customers.[347] When confronted with this viewpoint, Staff witness explained that Staff's "rate design is what it is, but it's not intentional."[348] Whether Staff is intentionally or unintentionally shifting revenues isn't the issue; the evidence shows that it is occurring, and that's the issue. For example, despite recommending an increase of 10.6 percent (at surrebuttal stage), under Staff's rate design 77 percent of the Company's customers will experience a 2.5 percent decrease.[349] Furthermore, under Staff's rate design, this substantial majority of the customers will pay a rate of return on rate base of less than 2.5 percent as compared to commercial customers that are paying a return of over 24 percent.[350]

Staff attempted to rebut this evidence by challenging the Company's cost of service study. Staff, however, did not prepare its own cost of service study.[351] Staff could not substantiate any problems with that cost of service study and Staff did not quantify any impacts resulting from Staff's concerns with Mr. Bourassa's cost of service study.[352] On the other hand, Mr. Bourassa evaluated the specific impacts of Ms. Brown's criticisms and

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[347] Bourassa Rj. at 29:17-24.
[348] Tr. at 996:2-17.
[349] Bourassa Rj. at 30:14-15, 22-23, Exhibit TJB-RJ5.
[350] *Id.*
[351] Tr. at 1001:25 – 1002:2.
[352] *Id.* at 1000:12-20.

determined that Ms. Brown's concerns did not result in any changes to the cost of service study. Specifically, Mr. Bourassa testified that when he modified his cost of service study by allocating less to the customer function and more to demand and commodity, there was no appreciable impact on the cost of service study or the evidence of Staff's revenue shifting.[353] Staff and RUCO did not challenge or rebut that testimony at hearing. The testimony that Staff's rate design will increase the risk of revenue erosion also is undisputed.[354] Thus, the Company's rate design, which promotes conservation through principles that recognize cost of service, gradualism and fundamental fairness, should be adopted. Unlike Staff's rate design, the Company's rate design actually sends the right price signal to customers about the need to conserve water.[355]

3. <u>Hook Up Fee Tariff - When should a HUF Payment be CIAC?</u>

The Company proposed a HUF tariff as a means of raising capital to finance backbone plant needed to serve new development in its CC&N.[356] The Company's planned use of HUF funds to build plant is part of an overall capitalization that is designed to equitably apportion the overall costs of service in a manner that allows rates to remain within a reasonable range over time.[357] Staff and RUCO support the implementation of a HUF tariff.[358] Both, however, oppose the inclusion of the following language in the tariff: "The Company shall not record amounts collected under this tariff as CIAC until such amounts have been expended for plant."[359] This is the same language proposed by RRUI in its pending rate case.[360]

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[353] Bourassa Rj. at 31:9 – 34:21; Tr. at 1042:17 – 1044:11.

[354] Bourassa Rb. at 37:19 – 38:7.

[355] Tr. at 1053:11-22, 1055:8-17.

[356] Applicants' September 16, 2010 Notice of Filing ("Notice of Filing) at Exhibit 6, Section I; Sorensen BVWC Dt. at 7:22-26; Sorensen NSWC Dt. at 9:18-23; Sorensen SSWC Dt. at 9:21-25.

[357] Sorensen BVWC Dt. at 7:22-26; Sorensen NSWC Dt. at 9:18-23; Sorensen SSWC Dt. at 9:21-25.

[358] Scott Sb. at 6:10-15; Coley Sb. at 26:19-21.

[359] Notice of Filing at Exhibit 6, Section IV(B); Coley Sb. at 26:15-17; Brown Sb. at 32:20-22.

[360] Rio Rico Closing Brief at 74:18 – 76:14, Brief Exhibit 1; Rio Rico Reply Brief at 44:6 – 46:5.

The dispute is not over whether the Commission can authorize utilities to postpone recording HUF funds as CIAC until the funds are actually spent. Staff and RUCO both admit that it is within the Commission's discretion to approve the proposed language.[361] This is true even if doing so would alter a previously established practice.[362] Candidly, the Company and its counsel actually thought it was offering the Commission a solution to a problem. HUF tariffs have become commonplace over the past ten (10) years as the Commission fostered a "growth pays for growth" policy. As growth has slowed, however, several utilities have faced the problem of unexpended CIAC being deducted from rate base.[363] The Company's proposed language does not convert non-investor supplied capital into the shareholder's investment, it simply seeks to postpone CIAC treatment until such time as the plant is actually funded. Until then, the Company does not have any beneficial use of the HUF funds as they merely sit in a bank collecting interest that inures to the HUF account.[364]

It was difficult to understand why Staff and RUCO were so vehemently opposed to this language in the RRUI case. At trial in this case, the real reason was revealed – deducting unexpended HUFs from rate base is a benefit to ratepayers because it lowers rate base. As Mr. Coley explained "RUCO is claiming that it is a detriment to ratepayers not to deduct the [CIAC] when received, because it mitigates rates by reducing the rate base to ratepayers."[365] But CIAC is a deduction to rate base to ensure that utilities do not earn a return on someone else's money. Here, we are talking about cash sitting in a bank account, which is not being added to rate base, thus there is no way for the utility to earn a return on the CIAC in the first place. This means that it is the Company's used and useful

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[361] Tr. at 607:12-18, 609:10-18, 990.
[362] *Id.* at 993:24 – 994:5.
[363] *Id.* at 253:23 – 255:3.
[364] *Id.* at 108:2-24; 114:24 – 115:16; Sorensen Rj. at 3:9-17.
[365] Tr. at 585:2-12.

rate base that Staff and RUCO are unabashedly confiscating in order to lower rates.[366]

Is this really to be the new purpose of a HUF tariff? Will Staff and RUCO really be allowed to reach into the utility's pocket to lower rates by use of HUFs now that the utilities are not seeing as much growth? This would be poor policy given that the utility can require that the same plant be funded as an advance under a line extension agreement, or be funded with investor supplied capital, both of which lead to higher rates.[367] Those are certainly better alternatives than losing a return on used and useful plant because someone else's money is sitting in the bank waiting to be spent at some unknown time in the future, which Staff and RUCO insist be the price of having a HUF tariff.

CONCLUSION

Based on the foregoing, Applicants respectfully request the following relief:

a. A finding that the fair value of Applicants' property devoted to water is $7,857,799;

b. Approval of an overall rate of return on such rate base equal to 9.85 percent;

c. A determination of a revenue requirement for Applicants of $5,267,035, which constitute increases over adjusted test year revenues of $1,104,899 or 26.55 percent over the test year; and

d. An Order authorizing Applicants to transfer all assets, including Certificates of Convenience and Necessity, from NSWC and SSWC to BVWC pursuant to A.R.S. § 40-285, and any other such authority that the Commission deems applicable.

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[366] *Id.* at 586:14-19. *See also id.* at 593:15-20, 992:6-7.

[367] *See* R14-2-406 and R14-2-606.

DATED this 5th day of October, 2010.

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